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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

TOM FORESE – CHAIRMAN

DOCKETED

ROBERT BURNS

DOUG LITTLE

JUN 02 2017

ANDY TOBIN

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IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR A HEARING TO
DETERMINE THE FAIR VALUE OF THE
UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

**EMERGENCY MOTION OF
COMMISSIONER ROBERT BURNS
TO COMPEL COMPLIANCE WITH
INVESTIGATORY SUBPOENAS**

**(EXPEDITED RULING AND
SUSPENSION AND CONTINUANCE
OF RATE CASE PROCEEDINGS
REQUESTED)**

IN THE MATTER OF FUEL AND
PURCHASED POWER PROCUREMENT
AUDITS FOR ARIZONA PUBLIC SERVICE
COMPANY

Pursuant to an Under Advisement Ruling (“Ruling”) of the Superior Court of the State
of Arizona, In and For the County of Maricopa, dated May 30, 2017, in Case No. CV2017-

001831 (the “Superior Court Case”), Commissioner Robert Burns moves the Commissioners to immediately issue two orders:

1. An order confirming that Commissioner Burns has individual authority to issue and enforce the two subpoenas issued by Commissioner Burns on August 25, 2016 (the “Subpoenas”) (copies at Exhibit “A” hereto), that the remaining Commissioners will not act upon the objections against the Subpoenas filed with the Commission by or on behalf of Arizona Public Service Company (“APS”), Pinnacle West Capital Corporation (“Pinnacle West”), and Donald Brandt, the Chief Executive Officer of APS and Pinnacle West (hereafter, collectively, the “Respondents”), and that unless Respondents obtain a court order limiting the Subpoenas, the Subpoenas are subject to immediate enforcement by Commissioner Burns without interference by the other Commissioners.
2. An order directing the Administrative Law Judge in this APS rate case to promptly decide the two motions Commissioner Burns filed in this case on April 26 and 27, 2017 (the “Rate Case Motions”)¹, before any other actions are taken in this rate case.

It is time that Arizona’s largest monopoly utility and its parent be fully open with its regulators and the 1.2 million of Arizonans it seeks to saddle with ever-increasing service charges. And it is time for any Commissioners who might be suspected of being influenced by massive election spending from APS and Pinnacle West to step aside and stop shielding these companies. The Arizona Corporation Commission’s (“Commission”) role is to regulate

¹ The Rate Case Motions are:

- A. The Emergency Motion of Commissioner Robert Burns for Relief (1) Confirming that the Administrative Law Judge Will Facilitate Calling and Questioning of Hearing Witnesses; and (2) Approval of his Counsel Participating in Questioning (Expedited Ruling and Suspension and Continuance of Hearing Requested) (filed April 26, 2017); and
- B. Commissioner Burns’ Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017).

1 monopolies and to protect the public, not to assist the monopolies through action or omission
2 in avoiding thorough disclosure to the Commission.

3 APS, a monopoly regulated by the Commission, and Pinnacle West, which is APS'
4 parent company, are widely suspected of having spent significantly in both "dark money" and
5 open campaigns to capture the allegiance of a majority of the current Commissioners. Despite
6 Respondents' ongoing, aggressive campaign to keep the most relevant information secret, the
7 known facts are troubling. Furthermore, as confirmed by an Opinion of the State's highest
8 legal officer, the Arizona Attorney General, Commissioner Burns' has individual authority to
9 issue and pursue additional relevant information about APS and Pinnacle West. [See Exhibit
10 "J" hereto]. Given these unique circumstances, the continuing reluctance of APS, Pinnacle
11 West, and other Commissioners to allow the curtains to be drawn on any back-room dealings,
12 influence peddling strategies, and interactions with Commissioners and their surrogates,
13 compounds suspicions and creates the appearance of impropriety. Further, the recent
14 indictment on corruption charges of a former Commissioner and a political operative who may
15 also be closely linked to APS only sharpens justification for both the information sought in the
16 Subpoenas and the investigation into disqualification Commission Burns has requested. As set
17 forth below, there is no legal justification for the Commissions' further obstruction to
18 Commissioner Burns obtaining the information, testimony, and documents requested. If the
19 facts will exonerate and support APS and Pinnacle West, those companies and the other
20 Commissioners should welcome it. If the facts instead suggest something else, conscientious
21 Commissioners, whose position is intended to serve utility consumers first, should allow
22 Commissioner Burns to immediately pursue the truth.

23 This motion is made personally by Commissioner Burns, and through his designated
24 counsel², to ensure compliance with the Order of the Superior Court and to overcome all

25
26 ² Commissioner Dunn's comment at footnote 2 of his letter filed in this docket on May 30,
27 2017 that the Commissioners cannot consider motions filed by Commissioner Burns in this
28 case because they were filed "by an attorney that has not been admitted to appear in the rate
case on behalf of Commissioner Burns" is incorrect. The law firm representing Commissioner
Burns was retained by a formal written engagement agreement with the Commission that

1 objections filed by APS, Pinnacle West and CEO Brandt in the Superior Court Case as
2 justification for their recent Motion to Dismiss, including that doctrines of primary jurisdiction
3 and exhaustion of administrative remedies preclude the Superior Court from considering
4 Commissioner Burns' claims. Commissioner Burns hereby preserves his objections to having
5 to file a motion to compel³, and preserves the concerns and issues he has raised in the APS rate

6
7 implemented the formal approval of the Commissioners to hire private counsel for
8 Commissioner Burns. The engagement expressly included retention for matters, issues, claims
9 and actions relating to or arising in connection with inquiries into Arizona Public Service
10 Company or Pinnacle West Corporation, including the Subpoenas issued on or about August
11 25, 2016 by Commissioner Burns, and it specifically authorized services in connection with
12 proceedings before the Arizona Corporation Commission concerning the Subpoenas. The firm
13 also filed matters in this case and in Commission Docket No. E-01345A-16-0123 (the "T&D
14 Docket") prior to the Commissioners' vote on March 14, 2017 to stop the Commission from
15 paying for further counsel services for Commissioner Burns. Therefore, the firm's retention
16 and engagement as Commissioner Burns' counsel and representative for proceedings in this
17 case was expressly authorized by the Commission long before Commissioner Burns filed his
18 recent motions in this docket. Moreover, there are no rules requiring a Commissioner to have
19 his or her attorney "admitted" to appear in a rate case, nor could the Commission regulate
20 attorney admission in that way as the question of representation by counsel is a matter of due
21 process and regulated per Rule 31(a)-(d), Rules of the Supreme Court of the State of Arizona.
22 To ensure that no argument about "admission" of counsel, regardless of its lack of merit,
23 remains an excuse to further delay or avoid resolution of the critical issues raised hereby,
24 Commissioner Burns has separately executed this Motion as his own direct motion to the
25 Commission, and also hereby confirms that the law firm of Baskin Richards PLC is his
26 personally designated representative for filings in this matter and has been fully authorized to
27 make all filings previously made in this case and the T&D Docket and to make all further
28 necessary filings in Commission dockets as his agent and counsel. The Commissioners are
therefore on notice that all filings made on behalf of Commissioner Burns in this docket and
the T&D Docket by the law firm of Baskin Richards PLC are the motions and/or filings of
Commissioner Burns personally and are entitled to consideration as such. Furthermore,
though no further application for admission is required for counsel for a Commissioner,
Commissioner Burns hereby requests and expects as a matter of professional comity that his
fellow Commissioners will acknowledge his ongoing appointment of counsel as his
representative and accord his attorneys the respect and standing accorded counsel for other
participants in this matter, treating all filings made by such counsel as the filings of
Commissioner Burns personally.

³ Commissioner Burns specifically preserves his positions that he has individual authority to
issue and enforce the Subpoenas, that the Commission does not have primary jurisdiction in
connection with the relief claim he has filed in the Superior Court Case, that he does not have
to obtain the permission or approval of the other Commissioners for the issuance and

1 case about the need to investigate the disqualification of other Commissioners in all matters
2 involving APS or Pinnacle West. Commissioner Burns respectfully submits that good cause
3 exists to expedite consideration of this motion, as explained more fully below, and asks that a
4 public meeting be scheduled within the next week to address this motion fully. And, as stated
5 more explicitly in the accompanying Emergency Renewed Motion of Commissioner Robert
6 Burns for Relief Staying These Rate-Making Proceedings (“Motion to Stay”), Commissioner
7 Burns requests that the rate case be suspended until such time as the disqualification
8 investigation is complete and the public has assurance that the Commission’s decisions, upon
9 which the public relies for their protection, are not improperly compromised.

10 **I. The Respondents Refuse to Comply Fully with the Subpoenas.**

11 The Respondents refuse to fully comply with the Subpoenas. The Commissioners need
12 look no further than the Motion to Quash Or, In the Alternative, To Decline to Hear filed by
13 APS and Pinnacle West in this case on September 9, 2016 (the “First Motion to Quash”), and
14 their Renewed Motion to Quash filed in this case on March 10, 2017 (the “Second Motion to
15 Quash”), to confirm that the Respondents object to and have refused to respond to large
16 categories of information demanded by the Subpoenas. Respondents have repeated similar
17 objections in APS’s Objection to Commissioner Burns’ Demand for Testimony filed in this
18 case on April 26, 2017, and in the filings they made (then withdrew) in Maricopa County
19 Superior Court Case No. CV2016-014895. [See Exhibits “B” and “C” hereto (APS/Pinnacle
20 West Superior Court filings without exhibits)⁴]. For example, Respondents challenge
21 Commissioner Burns’ authority to individually issue and pursue the investigatory Subpoenas,
22 mistakenly claiming that other Commissioners have authority to quash the Subpoenas of an
23 issuing Commissioner. [See Second Motion to Quash, at 29 – 33]. Based on these misguided

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25 enforcement of the Subpoenas, and that he does not have to exhaust administrative remedies or
26 seek relief by a motion to compel compliance with the Subpoenas before he is entitled to
judicial consideration of his claim for declaratory relief in the Superior Court Case.

27 ⁴ Commissioner Burns incorporates the arguments APS and Pinnacle West made against the
28 Subpoenas in their prior court filings as indicative of the erroneous bases they use as excuses
for not responding.

1 presumptions, Respondents are refusing to produce information pertinent to this matter,
2 including information and records about: 1) expenditures or budgeting decisions of APS and
3 Pinnacle West in the areas of elections, political influence efforts, lobbying or marketing, and
4 charitable contributions designed to gain influence with political officials (“Political Influence
5 Efforts”); 2) APS/Pinnacle West’s overlapping financial structures; 3) Pinnacle West’s
6 financial operations, plans and objectives in connection with Political Influence Efforts and the
7 manner in which they impact APS’s rate requests. Respondents contend that information
8 about Pinnacle West is not relevant to any rate issues, (*See, e.g.*, First Motion to Quash, at 11-
9 13; Second Motion to Quash, at 14-17), that First Amendment interests make the subpoenas
10 unlawful and unenforceable, [*see, e.g.*, First Motion to Quash, at 15-18; Second Motion to
11 Quash, at 21-22], and that the Subpoenas are unenforceable because they are merely issued to
12 harass Respondents, improperly seek to depose APS’s CEO rather than letting APS select who
13 gets to testify, and because Commissioner Burns has threatened to make the information
14 supplied public [*see* First Motion to Quash, at 22-24; Second Motion to Quash, at 27-28].
15 Respondents’ objections are subterfuge; the information sought is directly relevant to APS’
16 current requested rate increase, as well as many other issues at the heart of the Commission’s
17 jurisdiction.

18 **II. The Commissioners Cannot Interfere with Commissioner Burns’ Subpoenas**
19 **Because He Has An Individual Right to Issue and Enforce Them.**

20 **A. The Subpoenas Seek Information Relevant to Pending Proceedings Within**
21 **the Authority of the Commission.**

22 The Arizona Constitution and Commission enabling statutes provide the
23 Commissioners very broad powers to conduct investigations related to regulated monopoly
24 utilities and to inspect the books and records of both the utility and their affiliated companies,
25 like Pinnacle West. *See, e.g.* Ariz. Const., art. XV, §§ 3-4; A.R.S. § 40-241 (“each
26 commissioner” may conduct inspections of corporate books or examinations under oath of
27 corporate officials); *Ariz. Corp. Comm’n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290-291 (1992)
28 (“*Woods*”).

[C]ourts give the Commission “wide berth” when they review the validity of

Commission investigations. [citation omitted]. In fact, “an appropriately empowered agency ‘can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.’” [citations omitted]. In other words, “the Commission must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission’s regulatory authority.” *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052-53 (2nd Cir. 1973). *See also EEOC v. Kloster Cruise Ltd.*, 939 F.2d 920, 922 (11th Cir. 1991) (court must enforce subpoena if agency makes plausible assertion of jurisdiction and information sought is not plainly incompetent or irrelevant to any lawful purpose of the agency).

Carrington v. Ariz. Corp. Comm’n, 199 Ariz. 303, 305 (App. 2000). These broad investigatory powers are intended to counter the undue influence large corporations had wielded against consumer interests in traditional legislative and judicial arrangements, and to provide a uniquely protective form of governmental powers “primarily for the interest of the consumer.” *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 308 (1914) *see also Woods*, 171 Ariz. at 291, 830 P.2d at 811; John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz.St.L.J. 1, 88 (1988). And the constant exposure to such deep scrutiny is the price APS and Pinnacle West pay for the special economic benefits of operating a state-sanctioned monopoly. *Woods*, 171 Ariz. at 290; *Davis v. Corp. Comm’n*, 96 Ariz. 215, 218 (1964) (“The monopoly is tolerated only because it is to be subject to vigilant and continuous regulation by the Corporation Commission,...”) Thus, an investigation concerning APS and Pinnacle West is appropriate, and is constitutionally and statutorily authorized, even when a Commissioner acts on mere suspicion of evidence that will help the Commissioner determine if particular activities of the companies come within the Commission’s broad authorities or not.

There is no question that Commissioner Burns’ demands for information about how Pinnacle West and APS have spent money obtained from ratepayers to fund election and political support activities, lobbying, marketing, charitable contributions, and other political influence peddling activities far exceed this low threshold. Undoubtedly, the Commission, and an individual Commissioner such as Commissioner Burns, has authority (and even a constitutional obligation) to investigate and take action to prevent even the appearance of undue influence of Commissioners by regulated entities and their affiliates, and to pursue

1 disqualification of Commissioners whose impartiality might reasonably be questioned under
2 constitutional due process standards. *See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S.
3 868 (2009). [*See also* Commissioner Burns’ Motion for Determination of Disqualification and
4 for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April
5 27, 2017), at 17-21]. Commissioner Forese has just called for a reexamination of past
6 Commission actions in light of the indictment of a past Commissioner. He has directed
7 Commissioner Tobin to initiate such efforts, confirming their mutual understanding that self-
8 policing questions about undue influence by regulated entities and their affiliates is a matter
9 central to the Commissioners’ authorized functions. It would be hypocritical and suspicious
10 for the Chairman to call for such a sweeping investigation of actions involving a prior
11 Commissioner and yet balk at Commissioner Burns’ investigation into the Chairman’s and
12 other Commissioners’ relationships to APS and Pinnacle West.⁵

13 Moreover, the information sought is central to the Commission’s rate-setting
14 authorities. It will confirm the transfer of utility customer revenues funding between APS and
15 its parent, and just how Pinnacle West relies upon and uses them for political influence
16 activities, and will provide evidence critical to determining the manner and extent to which
17 APS’s rate requests and rate settlement strategies and decisions, including calculations and
18 settlement decision-making for the pending request increase, are impacted and influenced by
19 Pinnacle West’s political and other influence-peddling spending and objectives.⁶ Before this
20 Commission, and before the Superior Court, Commissioner Burns detailed evidence

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22 ⁵ As the Commissioners are likely aware, Pinnacle West has even publicly reported receiving
23 federal grand jury subpoenas seeking “information principally pertaining to the 2014 statewide
24 general election races in Arizona for Secretary of State and for positions on the ACC,”
25 including “records involving certain Pinnacle West officers and employees, including the
26 Company’s Chief Executive Officer [Defendant Brandt], as well as communications between
27 Pinnacle West personnel and a former ACC Commissioner.” [*See* Exhibit “D”, at 27]. The
28 2014 election was the election in which Commissioners Forese and Little were elected and
about which there has been so much public outcry over the large “dark money” contributions
made for and against Commission candidates that year.

⁶ The Commissioners must concede that Arizona Constitution, Art. XV, § 3 makes rate-setting
and consideration a central function of the Commissioners.

1 confirming that Pinnacle West officials must be heavily involved in APS rate-setting strategy
2 and requests, and that Pinnacle West has spent millions and millions of dollars on the types of
3 political influence activities targeted by Commissioner Burns' subpoenas. [See, e.g.,
4 Emergency Motion of Commissioner Robert Burns for Relief (1) Confirming that the
5 Administrative Law Judge Will Facilitate Calling and Questioning of Hearing Witnesses; and
6 (2) Approval of his Counsel Participating in Questioning (Expedited Ruling and Suspension
7 and Continuance of Hearing Requested) (filed April 26, 2017), at Commissioner Burns'
8 Motion for Determination of Disqualification and for Stay of Proceedings Pending Full
9 Investigation (Expedited Ruling Requested) (filed April 27, 2017), at 15-17; Exhibit "E"
10 hereto (contents and arguments incorporated herein by reference), at ¶¶'s 13-24, 31-39; Exhibit
11 "F" hereto, at pp. 4-8]⁷. More, Pinnacle West has publicly promised to continue such
12 spending. [See, *id.*; Exhibits "G" and "H" hereto]. He has also established that Pinnacle West
13 regularly sets targets and projections for shareholders, investors and prospective financing
14 sources for such things as income growth and dividends, meaning Pinnacle West has carefully
15 projected its future expenses for various forms of political influence peddling, what it
16 anticipated earnings from Arizona consumers through its almost exclusive source of funds
17 (APS customer payments), and the difference between the two that will be available to fund
18 net income, corporate growth and shareholder dividends. [See Exhibit "F" hereto, at pp. 5-8].
19 Alternatively, had Pinnacle West not taken such factors into account, it could be exposed to
20 investor claims for offering knowingly uninformed financial performance projections. See,
21 *Marx v. Comput. Scis. Corp.*, 507 F.2d 485, 490 (9th Cir. 1974) (holding a jury could
22 reasonably find that corporation, "by ignoring facts seriously undermining the accuracy of the
23 forecast, failed to meet the duty imposed by § 10(b) [of the Securities and Exchange Act of
24 1934 (15 U.S.C. § 78j(b)).

25
26 ⁷ Commissioner Burns incorporates here his arguments and factual assertions made in his
27 Superior Court filings attached here as Exhibits "E" and "F", as well as the information in the
28 exhibits that are attached to those filings in the Superior Court docket, which exhibits are
available in that docket for review by the other Commissioners and their staff.

1 The only logical conclusion, then, is that Pinnacle West and APS set their rate requests
2 and rate negotiation strategy in part to ensure funds will be available to meet their influence-
3 peddling budgets and still meet their forward-looking financial forecasts required for
4 shareholders and investors. It is therefore highly likely that the subpoenaed information and
5 deposition testimony to follow it will show that what APS is seeking from ratepayers in its rate
6 of return calculations is based, in part, on funding future influence peddling costs and
7 objectives at the Pinnacle West level. The Subpoenas seek considerable information directly
8 relevant to the pending rate issues.

9 Also, the subpoenaed information has become critical to allow the Commission to
10 adequately assess the rate issues, because APS and Pinnacle West subsequently and similarly
11 refused to provide the requested information through an alternative method such as the
12 testimony of witnesses with sufficient knowledge for examination in this rate proceeding. As
13 the Commissioners are aware, Commissioner Burns formally requested the Administrative
14 Law Judge (“ALJ”) facilitate appearances by numerous senior Pinnacle West and APS
15 officials and even formally filed a list of initial questions for such officials addressing these
16 rate issues. There is no question, Pinnacle West and APS know exactly what information
17 Commissioner Burns requires. Yet, when asked questions eliciting such relevant information,
18 they responded with only a letter from an individual disclaiming knowledge of Pinnacle
19 West’s operations and who offered layers of formal objections purportedly excusing its refusal
20 to provide the required information through testimony. [See May 2, 2017 Declaration of
21 Barbara Lockwood (docketed May 4, 2017); Commissioner Burns’ Notice of Insufficiency of
22 APS and Pinnacle West Responses to Commissioner Burns’ Questions (docketed May 12,
23 2017) (arguments incorporated by reference herein)]. APS’s and Pinnacle West’s blanket
24 refusal to provide the requested information through testimony further heightens the need for
25 the Subpoenas and the disclosure they compel.

26 Finally, under Arizona Constitution, Art. XV, § 3, the Commissioners are authorized to
27 develop rules and regulations governing the practices of regulated public service corporations,
28 including ethics, transparency and disclosure rules. Indeed, Commissioner Burns opened the

1 transparency and disclosure docket in E-01345A-16-0123 the (“T&D Docket”) and
2 Commissioner Dunn opened an ethics docket under the assignment of Chairman Forese,
3 Docket No. AU-00000E-17-0079. Notably, just this week Commissioner Dunn highlighted
4 the need for ethical guidelines for the Commissioners when he wrote in this docket that
5 Commissioner Burns’ Motions “and other concerns regarding commissioner influence, have
6 highlighted the urgent need for a Commission Code of Ethics.” [See Letter of Commissioner
7 Dunn dated May 30, 2017]. Commissioner Dunn further stated that he plans “to develop a
8 code for the Commission as soon as possible.” [Id.]. Adding this to Commissioner Forese’s
9 letter this week affirming his directive to Commissioner Tobin to look into the propriety of
10 Commission policies and actions during the indicted former commissioner’s term, it appears
11 that a majority of the current Commissioners agree that consideration of transparency and
12 disclosure matters regarding regulated entities, such as Respondents, is within the
13 Commission’s authority. And, given the public outcry against even the possibility of
14 Commissioners being influenced by APS or Pinnacle West campaign spending, and the
15 concerns for due process violations in both the pending rate case and generally, there is no
16 better or more appropriate place than this docket to begin a rapid and thorough investigation
17 into disclosure and disqualification matters as they relate to APS/Pinnacle West expenditures
18 on Commission elections and other attempts by Respondents to gain improper influence over
19 Commissioners or their surrogates. Were Respondents to comply with Commissioner Burns’
20 Subpoenas, they may also supply critical information to assist the efforts initiated by
21 Commissioner Burns and Commissioner Dunn to create appropriate Commissioner and
22 regulated party ethics rules.

23 **B. The Investigatory Subpoena Right is an Individual Commissioner Power**
24 **with which the Other Commissioners Cannot and Should Not Interfere.**

25 The right to seek the types of relevant information outlined above through inspections
26 of records, investigatory subpoenas, and investigatory depositions is an individual
27 Commissioner right not susceptible to interference by other Commissioners. The Arizona
28 Constitution states, at Article XV, § 4:

1 The corporation commission, ***and the several members thereof, shall have power***
2 ***to inspect and investigate the property, books, papers, business, methods, and***
3 ***affairs*** of any corporation whose stock shall be offered for sale to the public and of
4 ***any public service corporation doing business within the state, and for the***
5 ***purpose of the commission, and of the several members thereof, shall have the***
6 ***power of a court of general jurisdiction to enforce the attendance of witnesses***
and the production of evidence by subpoena, attachment, and punishment, which
said power shall extend throughout the state. Said commission shall have power to
take testimony under commission or deposition either within or without the state.

7 (emphasis added). The Supreme Court of Arizona has affirmed that this exclusive delegation
8 of broad investigatory powers cannot be decreased by statute. *Selective Life Ins. Co. v.*
9 *Equitable Life Assurance Soc'y*, 101 Ariz. 594, 600 (1967). Thus, except to the extent the
10 Commission enabling statutes attempt to implement and broaden the constitutionally-delegated
11 investigation powers, *see id.* at 600 (“The legislature may enlarge the powers and extend the
12 duties of the corporation commission, but may not decrease its powers.”), Article XV, Section
13 4 is determinative of the investigatory powers of the Commission and its individual
14 Commissioners. In any event, the Arizona statutes are consistent and confirm that the
15 investigatory rights are individual Commissioner rights, not limited to collective, majority
16 actions. *See* A.R.S. § 40-241 (“each commissioner” may conduct inspections of corporate
17 books or examinations under oath of corporate officials).

18 Focusing back on the constitutional language, the Commissioners, just like the Arizona
19 courts, cannot ignore that express, plain language delegating authority for investigations,
20 subpoenas and depositions to “[t]he corporation commission” and also separately to “the
21 several members thereof.” That is the controlling plain language of the constitutional clause.

22 The provisions of our constitution are mandatory, Ariz. Const. art. II, § 32, . . .
23 When called upon to interpret a constitutional provision, we first examine the
24 provision’s plain language; if that language is unambiguous, we generally must
25 follow the text as written. *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426,
26 430 (1994). In such cases, “judicial construction is neither necessary nor proper,”
27 and we will not consider any extrinsic matter supporting a construction that would
28 vary the provision’s apparent meaning. *Id.* Only when the constitutional language
is ambiguous or its plain meaning would lead to an absurd result may we look
behind the bare words of the provision to determine the conditions that gave rise to
it and the effect it was intended to have. *Am. Bus Lines, Inc. v. Ariz. Corp.*
Comm’n, 129 Ariz. 595, 598, 633 P.2d 404, 407 (1981).

1 *Tumacacori Mission Land Dev., Ltd. v. Union Pac. R.R. Co.*, 228 Ariz. 100, 102 (App. 2011);
2 *see also Zamora v. Reinstein*, 185 Ariz. 272, 275 (1996) (same); *Canon School Dist. No. 50 v.*
3 *W.E.S. Constr. Co.*, 177 Ariz. 526, 529 (1994). The courts first consider the specific language
4 of the law “‘because we expect it to be ‘the best and most reliable index of’” its meaning.
5 *Zamora*, 185 Ariz. at 275 854 P.2d at 133 (quoting *State v. Williams*, 175 Ariz. 98, 100
6 (1993)).

7 It is a corollary, longstanding tenet of Arizona law that in interpreting the state
8 constitution, “the cardinal principle is to give full effect to the intent of the lawmaker”,
9 *Phoenix v. Yates*, 69 Ariz. 68, 71 (1949), and that to do so requires that “[e]ach word, phrase,
10 clause, and sentence must be given meaning so that no part will be void, inert, redundant, or
11 trivial.” *Id.* Interpreting Article XV, Section 4 to grant investigatory powers only to the whole
12 Commission rather than to individual Commissioners improperly renders the clause “and the
13 several members thereof” redundant, superfluous, and a nullity.

14 The Commissioners must also consider punctuation and the use of a conjunctive term in
15 the phrase “and the several members thereof.” *See, e.g., In re Phila. Newspapers, LLC*, 599
16 F.3d 298, 329 n.15 (3d Cir. 2010) (“The grammatical structure of a statute, including the
17 positioning of commas, should be considered in statutory interpretation, and indeed, it can
18 ‘mandate’ a particular reading of a statute.”). The phrase “, and the several members thereof,”
19 in Article XV, § 4 is set off both times it appears by commas and the conjunctive “and” from
20 the phrase “[t]he corporation commission” or “the commission.” That grammatical structure
21 mandates that the category described as “and the several members thereof” be read as
22 independent of and in addition to the category referred to as “[t]he corporation commission.”
23 *See United States v. Ron Pair Enters.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030, 103 L.Ed.2d
24 290, 298 (1989) (stating that separation of the statutory clause “interest on such claim” by
25 commas and the conjunctive words “and any” from references to fees, costs and charges
26 mandated the courts to interpret “interest on such claim” as a separate category of recoverable
27 monies.)
28

1 Therefore, applying the plain language, grammatical structure and punctuation used by
2 the constitutional framers, the Commissioners must conclude that Article XV, § 4
3 contemplates two distinct alternatives for exercising the investigatory powers described. The
4 Commission may act as a whole and conduct a collective investigation; but, each
5 Commissioner is also delegated the exact same rights to individually employ the broad
6 investigational powers without seeking cooperation or approval from the rest of the
7 Commissioners. And, given that express delegation of individual power, it is implied and
8 necessary that the Commissioners acting collectively cannot limit an individual
9 Commissioner's exercise of his or her investigatory powers. Bound by the Constitution and
10 the Arizona law governing constitutional interpretation, the Commission must acknowledge
11 Commissioner Burns' subpoena rights as individual powers that are not subject to either pre-
12 approval by, or interference through, a vote of the rest of the Commissioners.

13 Moreover, even if the language of Article XV, Section 4 were ambiguous, the law
14 would still require it be interpreted to provide an individually enforceable right in order to
15 meet the objectives of the Arizona framers who were undeniably concerned with corporate
16 overreach. *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308; *Woods*, 171 Ariz. at 291;
17 John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz.St.L.J. 1, 88 (1988). Were the
18 Commissioners' investigatory powers limited to either majority-approved investigations or
19 veto from the majority, the efficiency of the Commission would plummet. More, it would
20 create a dangerous gap in the bulwark of independent, objective consumer protection
21 envisioned by the constitutional framers, allowing a regulated entity to prevent full and
22 thorough disclosure of its undue influence practices (including even the most corrupt practices)
23 by simply capturing the allegiance of a majority of the Commissioners. Investigations into
24 unlawful coordination with the Commissioners could be blocked were a regulated entity to
25 control the majority of Commissioners.

26 Imagine the example offered by the recent indictment of former Commissioner Gary
27 Pierce who is alleged to have accepted illegal payments to acquire his help in promoting and
28 passing a matter desired by a manager of a regulated water utility. [See Exhibit "I"]. If the

1 type of scheme alleged there extended to two more commissioners the corrupt utility would,
2 under APS's and Pinnacle West's argument, be able to stop any and all investigations by the
3 other two commissioners into the corruption scheme. If it is true, as alleged in the indictment,
4 that a manager of a regulated utility would be willing to engage in bribery of one
5 commissioner, the APS position would actually encourage them to try and corrupt two more to
6 ensure the cover-up.

7 The framers of the Arizona Constitution and of the Commission's enabling statutes
8 were far wiser than to create a system allowing, let alone rewarding, corruption. Instead, they
9 expressly provided for individual commissioner authority to issue and enforce subpoenas,
10 knowing that so long as a single incorruptible commissioner remained, the grant of individual
11 investigatory powers would continue to guarantee accountability against the corrupted
12 remainder and thereby protect Arizona's consumers. Thus, the plain meaning and grammatical
13 construction of the constitutional language offering investigatory and subpoena powers to "*the*
14 *several members thereof*" must be honored to meet the framers' laudable objectives of
15 ensuring Commission-wide accountability.

16 The Arizona Attorney General has agreed with Commissioner Burns' position that he
17 has individual inspection and investigation authorities. In Atty. Gen. Op. No. I16-005 (R16-
18 002) the Attorney General addressed three questions concerning the individual investigatory
19 and inspection powers of a Commissioner. The opinion explained, in pertinent part, the
20 following:

21 Under Article XV, Section 4 of the Arizona Constitution, the Commission
22 *and individual Commissioners* may "inspect and investigate the property,
23 books, papers, business, methods, and affairs of any [Public Company] . . .
24 and of any [PSC] doing business within the state." The Legislature has also
25 provided the Commission *and individual Commissioners* statutory
26 authority regarding P[ublic]S[ervice]C[orporation] inspections and
27 examinations:
28

* * *

Section 40-241 *confers power on individual Commissioners* as well as the entire Commission. The plain language of Section 40-241(A) specifically refers to not just “[t]he commission” but also “each commissioner.” By using the language “each commissioner,” the Legislature clearly authorized individual Commissioners to exercise the powers in this statute. *J.D. v. Hegyi*, 236 Ariz. 39, 40-41 ¶ 6 (2014) (“If the language [of a statute] is ‘subject to only one reasonable meaning,’ [courts] apply that meaning.” (citation omitted)); *see also Fields v. Elected Officials’ Ret. Plan*, 234 Ariz. 214, 218 ¶ 16 (2014) (stating that “the legislature generally avoids redundancy”).

* * *

In sum, pursuant to Section 40-241, *an individual Commissioner may gather information regarding a PSC’s political and charitable contributions, and lobbying expenditures*, by inspecting the books and records of a PSC, and examining under oath PSC personnel.

* * *

Consistent with the answer to Question 1, based on the statute’s plain language, Section 40-241 *confers power on individual Commissioners, not just the Commission as a whole*.

[See Exh. “J” hereto (emphasis added)].

For the foregoing reasons, the powers of a single Commissioner to issue and enforce investigatory subpoenas authorized under Ariz.Const., art. XV, § 4 and A.R.S. § 40-241 cannot be limited or stopped by the remaining Commissioners. In essence, this prevents other Commissioners from using pretextual arguments to impede appropriate investigations while hiding biases created by undue influence or corruption, poor judgment, political envy, or any other motive. Meanwhile, APS and Pinnacle West are still offered the same protection. Like any other party troubled by government action against them, APS and Pinnacle West may resort to the courts to challenge the single Commissioner’s jurisdiction and assert defenses to the investigatory subpoenas allowed under Arizona law. *See, e.g., People ex rel. Babbitt v. Herndon*, 119 Ariz. 454, 456 (1978) (listing bases for objections to administrative subpoena). APS and Pinnacle West know this, and obviously agree that they have the judicial option, having previously filed a Superior Court action to avoid the Subpoenas.

The Commissioners must therefore confirm that they have no power to limit

1 Commissioner Burns' Subpoenas by either requiring pre-approval by a majority of
2 Commissioners or by voting to quash or limit the Subpoenas. They must confirm for APS and
3 Pinnacle West that their objection that Commissioner Burns may not individually initiate or
4 enforce his Subpoenas or that the other Commissioners may overrule him and quash the
5 Subpoenas are without merit, and that absent judicial intervention and order, Commissioner
6 Burns is entitled to enforcement of the Subpoenas.

7 **III. The Respondents Offer No Valid Objections to the Subpoenas.**

8 Even if the Constitution allowed the other Commissioners veto power over the issuing
9 Commissioner's Subpoenas, the Respondents offer no valid objections warranting a motion to
10 quash.

11 **A. The Jurisdictional Objections Fail.**

12 The Respondents' arguments that Commissioner Burns seeks information outside the
13 jurisdiction of the Commission fails. The principal problem with Respondents' argument is
14 that the law recognizes in administrative agencies incredibly broad jurisdiction to conduct
15 investigations. The Arizona courts have held that "the Commission must be free without
16 undue interference or delay to conduct an investigation which will adequately develop a
17 factual basis for a determination as to whether particular activities come within the
18 Commission's regulatory authority." *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305
19 (App. 2000) (citing *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052-53 (2nd Cir.
20 1973) *EEOC v. Kloster Cruise Ltd.*, 939 F.2d 920, 922 (11th Cir. 1991)). Thus, Commissioner
21 Burns need not even have proof yet that particular forms of relevant evidence exist to support
22 his Subpoenas. The U.S. Supreme Court explained that instead an administrative agency "has
23 a power of inquisition" akin to that of a grand jury, which it may exercise "merely on suspicion
24 that the law is being violated, or even just because it wants assurance that it is not." *United*
25 *States v. Morton Salt Co.*, 338 U.S. 632, 642-43, 94 L. Ed. 401, 70 S. Ct. 357 (1950); *see also*
26 *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946). The
27 Arizona Supreme Court has adopted the same standard. *Polaris Int'l Metals Corp. v. Arizona*
28 *Corp. Comm'n*, 133 Ariz. 500, 506 (1982) ("[A]n appropriately empowered agency 'can

1 investigate merely on suspicion that the law is being violated, or even just because it wants
2 assurance that it is not.” *Id.* (quoting *Morton Salt Co.*, 338 U.S. at 642-43); *see Carrington*,
3 199 Ariz. at 305 (same). Thus, an agency investigator need only show that his inquiry “is
4 within the authority of the agency, the demand is not too indefinite and the information sought
5 is reasonably relevant.” *Morton Salt Co.*, 338 U.S. at 652; *see United States v. Stuart*, 489 U.S.
6 353, 359, 103 L. Ed. 2d 388, 109 S. Ct. 1183 (1989); *Carrington*, 199 Ariz. at 305
7 (“Accordingly, a party may resist the Commission’s subpoena on grounds that the inquiry is
8 not within its scope of authority, the order is too vague, the subpoena seeks irrelevant
9 information, or the investigation is being used for an improper purpose, such as to harass.”)
10 (citing *People ex rel. Babbitt*, 119 Ariz. at 456).

11 Commissioner Burns’ Subpoenas meet this low jurisdictional threshold. As noted above
12 and in his other filings in this case and before the Superior Court, Commissioner Burns seeks
13 information relevant to the pending APS rate request and to pending questions of
14 Commissioner disqualification or capture, and needed to inform rulemaking proceedings in his
15 T&D Docket and in Commissioner Dunn’s ethics docket. The following examples show how
16 the information he seeks can and will be used for central Commission decision-making in
17 already-pending rate, transparency and ethics matters.

- 18 • The evidence to be obtained will likely help prove that indeed the APS rate
19 requests and rate request and negotiation strategy are developed and approved by
20 officials that include Pinnacle West executives and staff, and that the rate of
21 return or other components of the rate request and the APS rate negotiation
22 strategy are connected to ensure Pinnacle West and APS have enough revenue to
23 both meet their budget goals for continued influence peddling activities (via
24 campaign or political group support, lobbying, or even civic event support used
25 as a *quid pro quo* for leveraging political lobbying by local officials of
26 Commissioners) and their forward-looking forecasts to shareholders, potential
27 investors and lenders. This will give the Commissioners powerful evidence that
28 APS has been disingenuous in its repeated denials that its rate requests seek

1 anything related to political activities. It will further expose that APS has sought
2 now (and perhaps in the past) rates intended to generate reimbursement for
3 political and marketing activities in violation of what it knows is the Commission
4 policy. Finally, it will show that APS is really seeking through its rate request
5 enough funding to maintain its and its parent corporation's political speech –
6 meaning it is using its rate requests and Commission powers to force ratepayers
7 to underwrite political speech in violation of constitutional prohibitions. There is
8 no question such evidence would fall squarely in the rate-making and rulemaking
9 authorities of the Commission over public service corporations.

- 10 • The evidence to be obtained will demonstrate just how APS and Pinnacle West
11 have decided upon which Commission candidates to confer their exceptional
12 financial largesse for, or against, and just what political machinery and
13 surrogates they have put in play to ensure that their money is well and effectively
14 spent, that it generates as much candidate goodwill or affinity as possible, and
15 that candidates get the message that APS and Pinnacle West are in their corner
16 and want to know how they can best help. These operations are particularly
17 critical in relation to the use of “dark money” groups in which APS and Pinnacle
18 West (and the groups they support) are prohibited by law from coordinating with
19 candidates directly or indirectly. This past week's indictment of Arizona
20 lobbyist James Norton in connection with alleged corruption of a former
21 Commissioner raises particular concerns. Mr. Norton has been linked to APS,
22 with one recent article describing APS as an [a]ctive client” of Mr. Norton. [See
23 Exhibit “K” hereto]. He and Don Brandt, APS CEO, have served on at least one
24 high-profile campaign fundraising committee together. Given the volume of
25 other suspicious facts concerning the massive infusion of “dark money” into the
26 2014 Commission election, [see Commissioner Burns' Motion for Determination
27 of Disqualification and for Stay of Proceedings Pending Full Investigation
28 (Expedited Ruling Requested) (filed April 27, 2017), at 4-9], and the widely

published suspicions that it was fueled by APS/Pinnacle West interests, it is critical to know if APS or Pinnacle West used political operatives in the field to either directly or indirectly coordinate in any way with any candidate campaigns or their surrogates. This information is central both to questions of Commissioner disqualifications already pending in this case and to future rulemaking for transparency and ethics rules needed to curb any abuses in the future. Even if the investigation only demonstrates types of *unused* opportunities APS or Pinnacle West have had to potentially misuse political influence the companies chase, it draws out critical evidence that will help the Commissioners form walls against such opportunities in the future. The simple answer is, effective rules require a detailed understanding of what the mechanics of regulatory capture or influence in Arizona are or might be. It is only logical that the Commissioners would want, and need, as much information as possible about what has happened in the past to develop ways to combat it in the future. This part of the Subpoenas seeks information relevant to matters squarely in the jurisdiction of the Commission.

For these reasons, and others obvious from the scope of the Subpoenas, the information Commissioner Burns seeks is directly, even critically, relevant to rate-making, Commissioner disqualification, and transparency and ethics matters currently pending before the Commission and expressly and impliedly delegated to the Commission by the constitutional framers and the Arizona Legislature. The arguments by Respondents that the Subpoenas somehow exceed Commissioner Burns' jurisdiction are meritless.

B. The Relevance Objections Fail.

The Respondents' relevance objections are also meritless. First, they state the wrong standard for contesting relevance of an agency administrative, investigatory subpoena. Even judicial proceedings reviewing agency investigatory subpoenas "are designed to be summary in nature." *EEOC v. Tempel Steel Co.*, 814 F.2d 482, 485 (7th Cir. 1987). "The courts' role in a proceeding to enforce an administrative subpoena is 'extremely limited.'" *McVane v. FDIC*

1 (*In re McVane*), 44 F.3d 1127, 1134-36 (2d Cir. 1995) (quoting *NLRB v. C.C.C. Assoc., Inc.*,
2 306 F.2d 534, 538 (2d Cir. 1962)). The courts therefore defer to the investigating
3 administrative official's appraisal of relevance, "which 'must be accepted so long as it is not
4 obviously wrong.'" *McVane*, 44 F.3d at 1134-36. If Commission review were allowed, it
5 would have to be equally deferential to Commissioner Burns.

6 A court must therefore enforce an administrative subpoena that is just "reasonably
7 relevant" to something within the scope of the agency's authority. *Tempel Steel Co.*, 814 F.2d
8 at 485; *see also* *FTC v. Monahan*, 832 F.2d 688, 689 (1st Cir. 1987), *cert. denied*, 485 U.S.
9 987, 108 S. Ct. 1289, 99 L. Ed. 2d 500 (1988); *see also*, *Carrington*, 199 Ariz. at 305; *United*
10 *States v. Westinghouse Elec. Corp.*, 788 F.2d 164, 166 (3d Cir. 1986); *EEOC v. Maryland Cup*
11 *Corp.*, 785 F.2d 471, 475-76 (4th Cir.), *cert. denied*, 479 U.S. 815, 93 L. Ed. 2d 26, 107 S. Ct.
12 68 (1986). The issuing official must only make "a 'plausible' argument in support of"
13 relevance, and a court would have to "enforce the subpoena if the information sought there is
14 not 'not plainly incompetent or irrelevant to any lawful purpose'" of the agency." *Casey v.*
15 *FTC*, 578 F.2d 795, 799 (9th Cir. 1978); *Carrington*, 199 Ariz. at 305 (same); *Marshall v. Able*
16 *Contractors, Inc.*, 573 F.2d 1055 (9th Cir. 1978); *Federal Maritime Commission v. Port of*
17 *Seattle*, 521 F.2d 431 (9th Cir. 1975). Based on the relevancy analysis provided above and in
18 the other filings incorporated herein [*see* Exhibits "E" and "F" hereto], Commissioner Burns
19 has far exceeded this low threshold and the Subpoenas would have to be enforced against the
20 relevance objections.

21 Finally, there is no valid objection that the Subpoenas seek broad categories of
22 information. The courts interpret the concept of relevance broadly. *See McVane*, 44 F.3d at
23 1134-1136 (citing *United States v. Arthur Young & Co.*, 677 F.2d 211, 216 (2d Cir. 1982),
24 *aff'd in part and rev'd in part on other grounds*, 465 U.S. 805 (1984), *cert. denied*, 466 U.S.
25 936 (1984); *United States v. Noall*, 587 F.2d 123, 125 (2d Cir. 1978) (standard for relevance of
26 sought-after tax records is whether the documents "might have thrown light upon" the object
27 of the investigation), *cert. denied*, 441 U.S. 923, 60 L. Ed. 2d 396, 99 S. Ct. 2031 (1979);
28 *accord Linde Thomson*, 5 F.3d at 1517 (wide range of investigation is appropriate where

1 “multifaceted activities are involved, and the precise character of possible violations cannot be
2 known in advance”) (quoting *FTC v. Texaco, Inc.*, 180 U.S. App. D.C. 390, 555 F.2d 862, 877
3 (D.C. Cir.) (en banc), *cert. denied*, 431 U.S. 974 (1977)). An agency is allowed “to
4 investigate by means of a ‘broad, generic document request’ because before the agency has
5 collected and analyzed the potentially relevant information it has no choice but to use general
6 discovery. *Arthur Young & Co.*, 677 F.2d at 216. Commissioner Burns does not yet know
7 precisely what relevant records Pinnacle West and APS keep, or what witnesses will have what
8 particularly relevant knowledge or information. Therefore, broad subpoena and deposition
9 requests are not objectionable.

10 **C. The First Amendment Objection Fails.**

11 Hoping to capitalize on general expressions in *Citizens United v. FEC*, 558 U.S. 310
12 (2010), APS and Pinnacle West assert that the Subpoenas violate their First Amendment
13 Rights. There are three fatal flaws to this argument.

14 First, even if the Subpoenas sought information that implicated First Amendment
15 interests, First Amendment interests will be overcome by “compelling interests” of a
16 government agency. *See United States v. Inst. for Coll. Access & Success*, 27 F. Supp. 3d 106,
17 115 n.8 (D.D.C. 2014). And, “a compelling interest exists — and [] a subpoena will be
18 enforced regardless of potential First Amendment issues — where the agency seeking the
19 information is conducting an investigation pursuant to its statutory authority.” *Id.* There is no
20 question that the matters Commissioner Burns is investigating fall within his express
21 jurisdiction and authorities as a member of the Commission – therefore a sufficient compelling
22 interest in the investigation exists to overcome any First Amendment claims.

23 Second, the First Amendment rights recognized in corporations like APS or Pinnacle
24 West do not entitle them to protection against discovery of information for legitimate
25 government purposes. Instead, they may preclude certain government action that actually and
26 directly substantively restricts speech or association with no sufficient countervailing
27 government interest, as when a government attempts to directly limit corporate political
28 spending on independent advertising that is completely uncoordinated with any candidate or

1 campaign committee. Where the government intervention is disclosure for legitimate
2 government purposes of what political spending the corporation is involved in, the First
3 Amendment interests provide no barriers. Eight of the nine U.S. Supreme Court justices
4 deciding *Citizens United* agreed on that point. See *Citizens United*, 558 U.S. 310 (2010).

5 Thus, precedent since *Citizens United* has confirmed that government power to require
6 corporate disclosure regarding political spending extends well beyond its power to regulate and
7 limit the amount or content of political speech. The court in *Vt. Right to Life Comm., Inc. v*
8 *Sorrell*, 875 F.Supp. 2d 376, 386 (D.Vt. 2012) aptly explained this distinction:

9 The *Citizens United* court made clear that the power to require disclosure
10 extends beyond the power to limit speech, analogizing that although
11 Congress ‘has no power to ban lobbying itself,’ it may require registration
12 and disclosure of lobbyists. 130 S. Ct. at 915 (citing *United States v.*
13 *Harriss*, 347 U.S. 612, 625, 74 S. Ct. 808, 98 L. Ed. 989 (1954)). Indeed,
14 *Citizens United* went further toward solidifying this principle, explicitly
15 endorsing a system of relatively unrestricted political speech paired with
16 ‘effective disclosure,’ noting that many of Congress’s findings of influence-
17 peddling in promulgating campaign finance legislation ‘were premised on a
18 system without adequate disclosure.’ 130 S. Ct. at 916.

19 *Vt. Right to Life Comm., Inc.*, 875 F. Supp. 2d at 386. What APS and Pinnacle West challenge
20 is an elected official’s right to require disclosure of political spending and coordination
21 activities. That sort of disclosure has been upheld as valid and non-infringing on First
22 Amendment rights under the *Citizens United* ruling.

23 Moreover, to the extent Commissioner Burns seeks information about political activity,
24 the request relates specifically APS and Pinnacle West’s arrangements or such activity to
25 determine, in part, whether it violates the Arizona and/or federal laws on coordinating with a
26 campaign or candidate, which in turn would violate contribution limits that all pass First
27 Amendment muster. As the laws restricting directly and indirectly coordinated spending are
28 enforceable over First Amendment objections, the investigation needed to determine if those
laws have been violated or not is also not prohibited by First Amendment concerns.

As to evidence of campaign spending and support sufficient to create grounds for
Commissioner disqualification, investigation of the same is not barred by First Amendment

1 principles because it, too, implicates overriding and compelling interests in informing parties
2 before the Commission, the public the Commissioners are there to protect, and the Arizona
3 voters and citizenry in general of potential bias that may create due process violations and
4 constitutionally require Commissioner recusal. These are critical and compelling public
5 interests served by the investigation and disclosure demanded, and they therefore overcome
6 any First Amendment challenges. *See McConnell v. Fed. Election Comm'n.*, 540 U.S. 93
7 (2003); *Buckley v. Valeo*, 424 U.S. 1 (1976).

8 Finally, a First Amendment challenge requires specific allegations and proof of a
9 detailed threat of chilling or impairing free speech or association. The target “who believes
10 that an administrative subpoena issued during an investigation will infringe his First
11 Amendment rights must make a ‘prima facie showing of arguable first amendment
12 infringement.’” *Doe v. U.S. SEC*, No. C 11-80209 CRB, 2011 U.S. Dist. LEXIS 132970, at
13 *5-6 (N.D. Cal. Nov. 17, 2011) (quoting *Brock v. Local 375, Plumbers Int’l Union*, 860 F.2d
14 346, 350 (9th Cir. 1988) (citing *Buckley*, 424 U.S. at 66)). Without that prima facie case of
15 First Amendment infringement, even “[a] court ‘may not intervene in an investigation,
16 notwithstanding an allegation of interference with speech and associational rights’” *Dole v.*
17 *Local Union 375, Plumbers Int’l Union*, 921 F.2d 969, 973-74 (9th Cir. 1990) (citing
18 *McLaughlin*, 880 F.2d at 175).

19 Respondents have not made a *prima facie* showing of First Amendment infringements
20 caused by the Subpoenas. “A prima facie showing requires ‘objective and articulable facts,
21 which go beyond broad allegations or subjective fears.’” *Doe*, 2011 U.S. Dist. LEXIS 132970,
22 at *5-6; *see Dole*, 921 F.2d at 973-74; *Brock*, 860 F.2d at 350. At a minimum, such objective,
23 articulable facts would require a demonstration by APS and Pinnacle West that “the subpoenas
24 will result in (1) harassment, membership withdrawal, or discouragement of new members, or
25 (2) other consequences which objectively suggest an impact on, or ‘chilling’ of . . .
26 associational rights.” Then, APS and Pinnacle West must further “demonstrate a causal link
27 between the disclosure and the prospective harm to associational rights,” and “that [they are]
28 the type of association where exposure could incite threats, harassment, acts of retribution, or

1 other adverse consequences that could reasonably dissuade persons from affiliating with
2 [them].” *Dole*, 921 F.2d at 972.

3 The foregoing demonstrations require actual proof of detailed impacts on speech or
4 association from real life; mere general allegations or speculative assertions that the disclosure
5 required by the Subpoenas will chill future speech or association are never enough. The
6 Respondents were required to demonstrate “in detail ‘how the summons has actually impacted
7 (or threatens to impact)’ on the organization’s activities.” *Id.* Even conclusory affidavits are
8 not enough proof. *Id.* “A *prima facie* showing entails, instead, ‘a careful documentation’ of
9 membership decline” or other actual, real-world impacts chilling speech or association. *Id.*
10 APS and Pinnacle West have failed to offer any such detailed proof of actual negative impacts
11 on their political speech or association with others. Their generalized assertions that the
12 Subpoenas might chill speech or association are wholly insufficient to even raise a First
13 Amendment issue.

14 Instead, the evidence shows just the opposite impact on APS and Pinnacle West.
15 Commissioner Burns issued his subpoenas in August, 2016; several months later, APS and
16 Pinnacle West’s CEO proudly announced Pinnacle West’s new political activity plans,
17 publishing data and a policy assuring that Pinnacle West will maintain at least as active a role
18 in political speech in the future as it has in the past. [See Exhibits “G” and “H” hereto].
19 Indeed, despite the Subpoenas having been issued, Pinnacle West openly spent millions of
20 dollars in support of candidates for the Commission in the past election cycle. They obviously
21 found vendors with which to spend that money. Nothing about the Subpoenas made them a
22 political pariah; rather, one may reasonably expect that local lobbyists, marketing specialists,
23 and other campaign and political operatives vie longingly for APS’s and Pinnacle West’s
24 substantial business. No evidence exists that others are turning away Pinnacle West political
25 contributions because of the Subpoenas. The Subpoenas have not slowed Pinnacle West and
26 APS in any way; but have instead made their political activities even bolder and more public
27 than ever before. They are entirely disingenuous in claiming some fear that the Subpoenas are
28 chilling their exercise of First Amendment rights.

1 The Subpoenas are not barred or restricted by any First Amendment interests, and given
2 the failure of APS and Pinnacle West to meet their *prima facie* detailed showing of First
3 Amendment infringement, the Commission (just like a court) could not interfere or require any
4 further analysis of the First Amendment issues.

5 **D. The Harassment Objection Fails**

6 The type of harassment that might make a Subpoena objectionable is also not provable
7 by the types of generalized, argumentative assertions Pinnacle West and APS make. They
8 charge Commissioner Burns with a vendetta; yet the record here proves Commissioner Burns
9 is concerned with very legitimate matters of central interest to the Commission's most vital
10 functions and responsibilities. He is proceeding to investigate matters about which there is
11 much smoke to see if they are grounded in much fire.

12 APS and Pinnacle West may bristle at Commissioner Burns' determination to fully
13 understand the entire process by which they plan for, budget for, and execute upon political
14 spending and influence peddling, but APS and Pinnacle West acknowledge publicly that the
15 near exclusive source of funds Pinnacle West has for that spending is APS ratepayer payments.
16 The idea that a Commissioner, buoyed and encouraged by APS customer concerns he has
17 heard, would want to understand if customer rates could be reduced if APS and Pinnacle West
18 would limit their seemingly extravagant political spending is only motivated by a vicious
19 desire to harass assumes provably false facts. The idea that despite the real prospects of
20 Commissioner disqualifications APS and Pinnacle West have likely created by their own
21 influence peddling strategies, Commissioner Burns is really only out to harass is demeaning.
22 And, the notion that Commissioner Burns does not really need to know what APS and Pinnacle
23 West have done in the past to suggest the best, most effective changes in ethical and
24 transparency rules for the future is just illogical.

25 Moreover, given the recent indictment of a political consultant linked publicly with
26 them, one might assume APS and Pinnacle West would welcome a name-clearing exercise,
27 showing that they have never used Mr. Norton or anyone like him to help coordinate with
28 political candidates or campaigns, especially those of Commission candidates. Their

1 continued resistance in light of such opportunities is curious.

2 What's more, APS's and Pinnacle West's aggressive attacks on Commissioner Burns'
3 motives are irresponsible and legally powerless. To overcome an administrative, investigatory
4 subpoena with claims of harassment one must show "firm evidence of bad faith." *SEC v.*
5 *Howatt*, 525 F.2d 226, 229 (1st Cir. 1975). The record here demonstrates only patience,
6 justification, and subpoenas APS and Pinnacle West desperately want to avoid for some
7 reason, but which target matters at the heart of the Commission's functions and APS's
8 responsibilities under law. There is no evidence of harassment or other improper purposes
9 behind the Subpoenas.

10 **E. The Objections to Mr. Brandt's Deposition.**

11 The Respondents allege Commissioner Burns is not entitled to select witnesses, such as
12 CEO Donald Brandt, but that they should be allowed to identify and select the witnesses for
13 Commissioner Burns whom they believe have the most relevant information. It is hardly
14 surprising that Commissioner Burns has noticed CEO Brandt. After all, it is he who issued the
15 shareholder statement in 2015 indicating why Pinnacle West decided to get involved in
16 political activity in the 2014 Commission election. [See Exhibit "L" hereto]. It is also highly
17 likely that he was the final approval source on the Pinnacle West Political Expenditure Policy
18 that is now prominently displayed on their web site, and it is hardly a stretch to believe that the
19 CEO would want to be informed of tens of millions of dollars in political, campaign, and
20 charitable spending the company is doing each year and the benefits of it. Given how
21 ubiquitous a part of their operations political-influence spending appears to be, it is reasonable
22 to expect the CEO to be abreast of and to help make decisions about future political spending
23 strategies and outcomes. Pinnacle West and APS have not objected that CEO Brandt has no
24 relevant information about political spending, lobbying, marketing or other influence peddling
25 by APS or Pinnacle West, and the facts indicate he does – perhaps as much as anyone else, and
26 in connection with the matters most sensitive to APS and Pinnacle West some of the most
27 significant information that few others might possess. There is no valid objection to taking
28 testimony from Mr. Brandt.

F. The Objections to Public Disclosure of Information.

The Respondents claim they need not respond because Commissioner Burns has threatened to make public what they disclose in response to the Subpoenas. Given Arizona's laws on public records and Commission proceedings, their claims to a complete right of privacy and confidentiality is dubious. Even so, their approach to this issue is all wrong. Rather than asking Commissioner Burns, or the courts if he won't agree, to some protective terms, they refuse to respond at all and seek to quash the Subpoenas entirely. This indicates that the confidentiality issue is not a real issue at all – just another excuse to refuse to produce the information required entirely.

Bolstering that impression, APS and Pinnacle West have not identified in any detail what portions of the responsive records or information is sensitive and deserves protection, and for what reasons. Arizona law is well developed on what type of corporate information is entitled to protection, *see* A.R.S. § 44-401, *et seq.*, and it would be the Respondent's obligation as custodian of the records to identify each record deserving protection and why. The reason they have not done so may be obvious – perhaps just identifying the categories of responsive records they have would likely prove there is much to see and consider. They would rather keep the Commission (and the courts) in the dark and ignorant and cast about for a complete bar to the investigation. Given that there are other ways to address their supposed confidentiality concerns, the Respondents certainly do not provide a basis for refusing to comply fully with the Subpoenas. Their confidentiality objections must be rejected.

IV. Disqualification Issues

Commissioner Burns has noted significant disqualification issues involving all the other Commissioners and has requested a stay of the APS rate case and proper investigation. There is no justification for proceeding to votes on the rate case until the serious issues of potential disqualification have been resolved fully. To do otherwise is a disservice to the consumers who might be forced to pay increased rate charges prematurely approved by a Commission with constitutionally disqualified members, and even to APS and Pinnacle West who could be forced in later proceedings to refund such monies and recommence the rate case. That is why

1 Commissioner Burns has filed with this motion a parallel emergency motion to suspend the
2 APS rate case.

3 But the disqualification issues have deeper meaning for this motion. If indeed reason
4 exists to disqualify Commissioners from acting on APS matters, those same reasons would
5 require disqualification from deciding the subpoena objections raised by APS and Pinnacle
6 West. If the Commissioners were to uphold such objections when they should have declared
7 their conflict and recused themselves, their orders will be subject to reversal and the
8 Commissioners involved will have violated their duties under law and violated rights of
9 Commissioner Burns and the intervenors and Arizona consumers effected by their votes.

10 Yet, Commissioner Burns asks the Commissioners to make a decision to *not* act on the
11 objections and to instead tell APS and Pinnacle West and Mr. Brandt that the Commissioners
12 have no power to and are not going to interfere with Commissioner Burns' investigation, and
13 that if the Respondents do not obtain a court order limiting the Subpoenas, the Commissioners
14 believe Commissioner Burns is entitled to have his Subpoenas fully complied with, without
15 any interference from the other Commissioners. As the Commissioners will not have taken an
16 affirmative position or action on the objections one way or the other, the disqualification issues
17 are not implicated.

18 **V. The Commissioners Must Immediately Direct the Administrative Law Judge to**
19 **Decide the Rate Case Motions.**

20 Commissioners Burns sought expedited review and ruling by the Administrative Law
21 Judge of his Rate Case Motions seeking help of the Administrative Law Judge in securing APS
22 and Pinnacle West witnesses and questioning them on matters relevant to the pending rate
23 case, and also seeking an immediate suspension of this rate case and initiation of an
24 investigation into potential Commissioner Disqualification. Expedited decision was, and
25 remains, necessary because APS is working to have its rate demands decided in the very near
26 future and without an appropriate stay of the case and expedited ruling Commissioner Burns'
27 right to conduct a proper pre-decision development of the relevant facts will be violated, as
28 might the rights of Commissioner Burns, all intervenors, all APS customers, and all Arizona

1 citizens to have the APS rate request decided only by Commissioners who are not
2 constitutionally disqualified from deciding matters involving APS due to APS's or Pinnacle
3 West's support.

4 The Administrative Law Judge indicated to Commissioner Burns through his counsel at
5 the start of the evidentiary hearing in this case that she was not going to decide his requests
6 absent direction from the full Commission. Accordingly, Commissioner Burns sought an
7 expedited staff meeting at which he could raise the issues and move for appropriate action by
8 the remaining Commissioners. That staff meeting was noticed for this past Tuesday, May 30,
9 2017, but was cancelled at the last minute when Commissioner Dunn requested the matter be
10 pulled. Commissioner Burns intended to inform the other Commissioners at the staff meeting
11 that given the disqualification issues, the other Commissioners could not decide his Rate Case
12 Motions and the only appropriate action by the Commissioners regarding the motions was to
13 direct the Administrative Law Judge that she was to promptly decide Commissioner Burns'
14 Rate Case Motions before any other action occurs in this rate case. The Commissioners must
15 issue that directive to the Administrative Law Judge.

16 The Rate Case Motions raise fundamental issues involving exercise by Commissioner
17 Burns of his right to call witnesses and develop testimony and information on matters he
18 contends are central to the rate case decision, as explained herein and by the filings
19 incorporated hereby. They further raise fundamental constitutional due process issues
20 involving the potential obligation of other Commissioners to recuse themselves from any APS
21 matter, including this one. [See Commissioner Burns' Motion for Determination of
22 Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling
23 Requested) (filed April 27, 2017)]. Given the disqualification issues Commissioner Burns has
24 presented, it would be inappropriate for the other Commissioners to decide these Rate Case
25 Motions.

26 After all, the Arizona Supreme Court recognizes as one of the most elemental and
27 lasting maxims of our law the rule that "no man may be judge in his own cause." *Terrell v.*
28 *Tempe*, 35 Ariz. 120, 123 (1929). *Emp.'s Benefit Ass'n v. Johns*, 30 Ariz. 609, 620 (1926)

1 (“One of the oldest and most salutary maxims of law is that no man shall be a judge in his own
2 cause, and any agreement to the contrary in cases like this, made in advance of the actual issue
3 arising, is both inequitable and illegal.”) It reaffirmed this policy just days ago in *Horne v.*
4 *Polk*, No. CV-16-0052-PR, 2017 Ariz. LEXIS 150, at *9 (May 25, 2017).

5 The right to a neutral adjudicator has long been recognized as a component
6 of a fair process. One cannot both participate in a case (for instance, as a
7 prosecutor) and then decide the case. Blackstone observed that a judge must
8 not rule in a cause in which he is a party, “because it is unreasonable that
9 any man should determine his own quarrel.” *Am. Gen. Ins. Co. v. Fed.*
10 *Trade Comm’n*, 589 F.2d 462, 463 (9th Cir. 1979) (quoting Blackstone,
11 *Commentaries on the Laws of England*, I, 91). In *In re Murchison*, 349 U.S.
12 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955), the United States Supreme
13 Court recognized the due process principle that “no man can be a judge in
14 his own case and no man is permitted to try cases where he has an interest
15 in the outcome.” . . . “Fairness of course requires an absence of actual bias
16 in the trial of cases. But our system of law has always endeavored to
17 prevent even the probability of unfairness.” *Id.* at 136; *accord Marshall v.*
18 *Jerricho, Inc.*, 446 U.S. 238, 243, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980)
19 (“[J]ustice must satisfy the appearance of justice, and this stringent rule
20 may sometimes bar trial by judges who have no actual bias and who would
21 do their very best to weigh the scales of justice equally between contending
22 parties.” (internal citation and quotation marks omitted)).

23 The decision in *Cty. of Cochise ex rel. Riley v. Good*, 453 P.2d 544, 545 (App. 1969) is
24 instructive of how this rule applies. There, the Court of Appeals ruled that a county attorney
25 could not be required to obtain approval of the Board of Supervisors before prosecuting a
26 supervisor for misconduct. “To require that the county attorney secure the consent of the
27 Board of Supervisors before initiating such procedure would do violence to the fundamental
28 principle that a man can never be a judge in his own case.” *Id.* Likewise, here, to address
Commissioner Burns’ Rate Case Motions would require the other Commissioners to first
decide their own disqualification and find themselves to be not disqualified. Then, as to the
motion requesting initiation of a disqualification investigation, the Commissioners would have
to decide if cause existed to initiate an investigation into their own disqualification. Those
types of decisions would be a fundamental due process violation under the foregoing Arizona
law.

Moreover, if the Commissioners were to decide the motions and it were later determined by a court that any of them was disqualified and should have recused themselves, the entire decision would need to be rejected as void. “The bias of the interested person taints the action of the whole body.” *Schumacher v. Bozeman*, 174 Mont. 519, 531, 571 P.2d 1135, 1142 (1977) (citing *Pyatt v. Mayor & Council of Borough of Dunellen*, 9 N.J. 548, 89 A.2d 1, 5 (1952)) “First, the participation of the disqualified member in the discussion may have influenced the opinion of the other members; and, secondly, such participation may cast suspicion on the impartiality of the decision. [citations omitted] It being impossible to determine whether the virus of self-interest affected the result, it must needs be assumed that it dominated the body’s deliberations, and that the judgment was its product.” *Piggott v. Borough of Hopewell*, 22 N.J. Super. 106, 91 A.2d 667, 670 (1952).

Thus, the Commissioners’ only available action on the Rate Case Motions is to direct the Administrative Law Judge to decide them. But, given the pending close of the rate case, the Commissioners should direct that they be decided promptly and before any other actions are taken in the rate case.

VI. Conclusion

The Commissioners cannot hear the objections of Respondents, APS, Pinnacle West, and CEO Brandt, because the governing law entitles each Commissioner to individually pursue an inspection of records and investigation through subpoenas and witness examination. They also should not hear such objections given the pending disqualification issues which require factual development through the Subpoenas. Though such limitations are narrow, there are established judicial limitations on the administrative subpoenas, and the Respondents may avail themselves of them in court. Their interests are fully protected by the judicial process. Commissioner Burns has already started a court action, and the Respondents can easily resurrect objections to the Court where they will get a fair hearing by the proper authority to decide questions of constitutional powers and statutory interpretation.

Even if the Commissioners were to decide that they had some authority to intervene in another Commissioner’s investigation, the objections the Respondents make to the Subpoenas

1 are legally insufficient and would not allow a court to intervene and limit the Subpoenas. For
2 the same reasons, the Commissioners would have no legal authority to interfere and must
3 reject the objections.

4 In summary, then, it is time to stop the procedural games and get on with finding the
5 facts central to important Commission matters. The Commissioners should immediately enter
6 their order confirming that Commissioner Burns has individual authority to issue and enforce
7 the Subpoenas issued by Commissioner Burns on August 25, 2016, that the remaining
8 Commissioners will not be acting upon the objections against the Subpoenas filed with the
9 Commission by or on behalf of APS, Pinnacle West and APS CEO Donald Brandt, and that
10 unless those Respondents obtain a court order limiting the Subpoenas, the Subpoenas are
11 subject to immediate enforcement by Commissioner Burns without interference by the other
12 Commissioners. The Commissioners should also issue their directive to the Administrative
13 Law Judge that she decide the pending Rate Case Motions from Commissioner Burns
14 promptly and before any other actions are taken in this rate case.

15
16 DATED this 2nd day of June, 2017.

17 COMMISSIONER ROBERT BURNS

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BASKIN RICHARDS PLC



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Alan Baskin
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*Attorneys for Commissioner Robert
Burns*

1
2 ORIGINAL and thirteen (13) copies
3 of the foregoing filed in Docket Nos.
4 E-01345A-16-0036 and E-01345A-16-0123
this 2nd day of June, 2017 with:

5 Docket Control
6 ARIZONA CORPORATION COMMISSION
7 1200 West Washington Street
Phoenix, AZ 85007
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On this 2nd day of June, 2017, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Bob Burns, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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By:



Lynn Jahnke
Executive Aide

EXHIBIT A

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION
COMMISSION



COMMISSIONER

Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov

ORIGINAL

August 25, 2016

Re: Arizona Public Service Company, Docket No. E-01345A-16-0036 / E-01345A-16-0123

Dear Mr. Brandt:

For nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made. Consequently, it is necessary for me to proceed in a more direct way.

I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures. This includes all expenditures made by APS, Pinnacle West and under APS's brand name for any purpose.

In his May 4, 2016 legal opinion, Attorney General Brnovich specifically stated that an individual Commissioner's § 4 constitutional authority "could relate to an affiliate of a [public service corporation] only if the affiliate is a Public Company." Ariz. Att'y Gen. Op. I16-130 at 12. In other words, the constitutional powers conferred to individual commissioners in §4 extend to a publicly traded company, which Pinnacle West is.

Please see the attached subpoenas outlining the information I seek. I look forward to your full compliance in this matter. Please be aware that I intend to publicly file all documents related to this investigation.

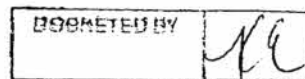
Sincerely,

Robert L. Burns
Commissioner

Arizona Corporation Commission

DOCKETED

AUG 25 2016



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2016 AUG 25 A 11:48

cc: Service list from E-01345A-16-0036

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE COMPANY
FOR A HEARING TO DETERMINE THE
FAIR VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA
SUBPOENA DUCES TECUM**

TO: Arizona Public Service Company
P.O. Box 53999
Phoenix, AZ 85072

400 North 5th Street
Phoenix, AZ 85004

Donald E. Brandt
Chairman, President and Executive Officer
Arizona Public Service Company & Pinnacle West Capital Corporation
Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection with the matters set forth in Attachment A (see Attachment B).

1
2 BEFORE WHOM APPEARANCE TO BE MADE:

3 Robert L. Burns, Commissioner
4 Arizona Corporation Commission
5 1200 W. Washington Phoenix, AZ 85007

6 **I. YOU ARE COMMANDED to bring with you and produce for inspection and**
7 **copying the following:**

8 See Attachment A.
9 _____
10 _____
11 _____

12 DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

13 September 15, 2016 at 10:00 a.m.

14 PLACE OF APPEARANCE: Arizona Corporation Commission
15 2nd Floor Conference Room
16 1200 W. Washington
17 Phoenix, AZ 85007

18 **II. YOU ARE COMMANDED to bring with you written responses to the following**
19 **questions:**

20 See Attachment A.
21 _____
22 _____
23 _____

24 DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

25 September 15, 2016 at 10:00 a.m.

26 PLACE OF APPEARANCE: Arizona Corporation Commission
27 2nd Floor Conference Room
28 1200 W. Washington
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

1 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

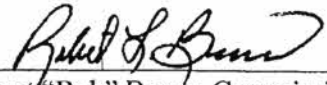
2 PLACE OF APPEARANCE: Arizona Corporation Commission
3 Hearing Room #1
4 1200 W. Washington
Phoenix, AZ 85007

5 For your convenience, prior to the appearance date for production of documents and written responses
6 requested in I. and II. above, you may turn in the subpoenaed documents and responses to
7 Commissioner Burns' Office located at the above address. If you elect to do this, you need not
8 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),
9 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

9 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner
10 Arizona Corporation Commission
11 1200 W. Washington Phoenix, AZ 85007
12 Telephone: 602-542-3682
13 E-mail: rburns@azcc.gov

12 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation
13 Commission and may subject you to further proceedings and penalties under law.

14 Issued this 25 day of August, 2016.

16 
17 Robert "Bob" Burns, Commissioner
18 Arizona Corporation Commission

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25 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,
26 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive
27 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
28 Requests should be made as early as possible to allow time to arrange the accommodation.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman

4 BOB STUMP

5 BOB BURNS

6 TOM FORESE

7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA PUBLIC SERVICE
10 COMPANY FOR A HEARING TO
11 DETERMINE THE FAIR VALUE OF THE
12 UTILITY PROPERTY OF THE COMPANY
13 FOR RATEMAKING PURPOSES, TO FIX
14 A JUST AND REASONABLE RATE OF
15 RETURN THEREON, TO APPROVE RATE
16 SCHEDULES DESIGNED TO DEVELOP
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA
SUBPOENA DUCES TECUM**

18 TO: Pinnacle West Capital Corporation
19 400 North 5th Street
20 Phoenix, AZ 85004

21 Donald E. Brandt
22 Chairman, President and Executive Officer
23 Arizona Public Service Company & Pinnacle West Capital Corporation
24 Mail Station 9042
25 P.O. Box 53999
26 Phoenix, AZ 85072

27 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding
28 the documents and information requests set forth in Attachment A.

29 YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona
30 Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under
31 oath in connection with the matters set forth in Attachment A (see Attachment B).

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BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007

I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

II. YOU ARE COMMANDED to bring with you written responses to the following questions:

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

1 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions
2 regarding the documents and information requests set forth in Attachment A.

3 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

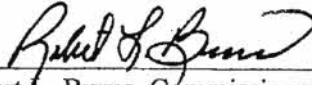
4 PLACE OF APPEARANCE: Arizona Corporation Commission
5 Hearing Room #1
6 1200 W. Washington
7 Phoenix, AZ 85007

8 For your convenience, prior to the appearance date for production of documents and written responses
9 requested in I. and II. above, you may turn in the subpoenaed documents and responses to
10 Commissioner Burns' Office located at the above address. If you elect to do this, you need not
11 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),
12 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

13 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner
14 Arizona Corporation Commission
15 1200 W. Washington Phoenix, AZ 85007
16 Telephone: 602-542-3682
17 E-mail: rburns@azcc.gov

18 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation
19 Commission and may subject you to further proceedings and penalties under law.

20 Issued this 25 day of August, 2016.

21 
22 _____
23 Robert L. Burns, Commissioner
24 Arizona Corporation Commission

25
26 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,
27 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive
28 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
Requests should be made as early as possible to allow time to arrange the accommodation.

ATTACHMENT A

Documents

- 1) Please provide the FERC Form 1 filed by APS for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 2) Please provide the SEC 10K filed by Pinnacle West for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 3) Please provide Pinnacle West's annual report to shareholders for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 4) Please provide transcripts of Pinnacle West's quarterly earnings calls for 2011, 2012, 2013, 2014, 2015, and 2016.
- 5) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's use of APS's name or brand.
- 6) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand.
- 7) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand.
- 8) Please provide an organizational chart illustrating the officers, directors and managers for APS.
- 9) Please provide an organizational chart illustrating the officers, directors and managers for Pinnacle West.

For 2011, please provide written responses to the following:

- 1) For calendar year 2011, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2011, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2011, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2011, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2011. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2012, please provide written responses to the following:

- 1) For calendar year 2012, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2012, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2012, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2012, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2012. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2013, please provide written responses to the following:

- 1) For calendar year 2013, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2013, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2013, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2013, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2013. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2014, please provide written responses to the following:

- 1) For calendar year 2014, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2014, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2014, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2014, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix

Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2014. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2015, please provide written responses to the following:

- 1) For calendar year 2015, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2015, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2015, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2015, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2015. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2016, please provide written responses to the following:

- 1) For year to date 2016, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For year to date 2016, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For year to date 2016, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For year to date 2016, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

Affiliated Interests—Please provide written responses to the following:

1) Please provide a list of all charitable donations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

2) Please provide a list of all donations for political purposes made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

3) Please provide a list of all expenditures to 501(c)(3) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

4) Please provide a list of all expenditures to 501(c)(4) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

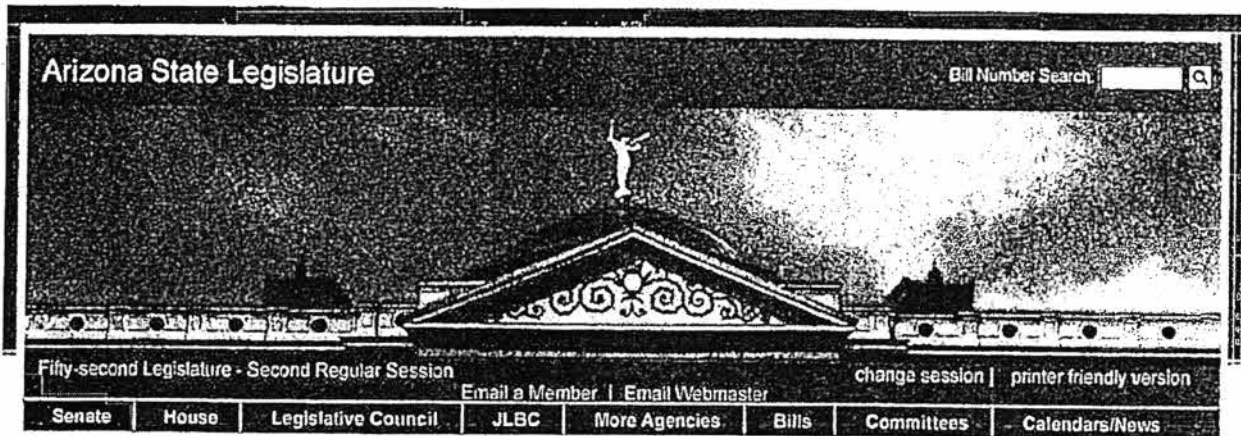
5) Please list each marketing/advertising expenditure made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

6) Please describe any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West. Please describe how these entities are funded. Please describe the arrangements governing the Foundation's use of APS's name or brand.

7) Please see the attached press releases from Pinnacle West, APS, and the APS Foundation (Attachment C). Please describe the relationships between these organizations. For example,

Alan Bunnell is listed as a media contact for all three organizations. Please indicate which entity he works for and which entity pays his salary.

ATTACHMENT B




4. Power to inspect and Investigate

Section 4. The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state.

Arizona State Legislature

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Fifty-second Legislature - Second Regular Session

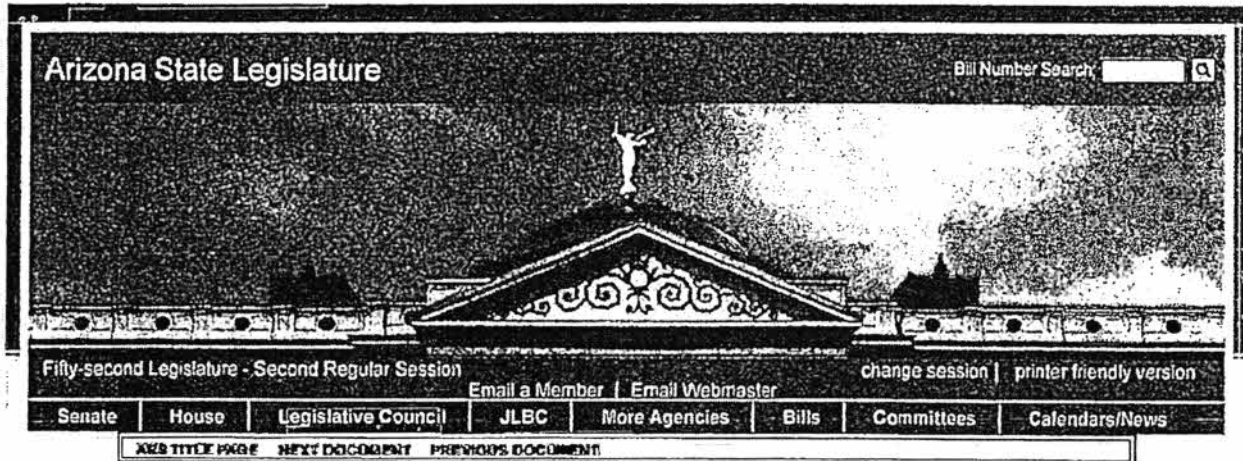
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40-241. Power to examine records and personnel of public service corporations; filing record of examination

- A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.
- B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.
- C. A written record of such testimony or statement given under oath shall be made and filed with the commission.



40-243. Conduct of hearings and investigations; representation by corporate officer or employee; arbitration

A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

B. In a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:


1. The corporation has specifically authorized the officer or employee to represent it.
2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

C. The commission may adopt or administer arbitration procedures to resolve complaints or disputes brought by a party against a telecommunications company, except that the commission shall not subject a wireless provider to arbitration unless the wireless provider and customer consent in writing. This section does not prohibit the commission from arbitrating disputes or complaints against a wireline service provider, involving telecommunications services contained in the bundle of services, to the extent the commission has jurisdiction as authorized pursuant to this chapter.

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40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage

A. Each commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.

B. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

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Rule 45. Subpoena
Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona

Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona (Refs & Annos)
VI. Trials (Refs & Annos)

16 A.R.S. Rules of Civil Procedure, Rule 45

Rule 45. Subpoena

Currentness

(a) Form; Issuance.

(1) General Requirements. Every subpoena shall:

- (A) state the name of the Arizona court from which it is issued;
- (B) state the title of the action, the name of the court in which it is pending, and its civil action number;
- (C) command each person to whom it is directed to do the following at a specified time and place:
 - (i) attend and give testimony at a hearing, trial, or deposition; or
 - (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
 - (iii) permit the inspection of premises; and
- (D) be substantially in the form set forth in Rule 84, Form 9.

(2) Issuance by Clerk. The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court of Arizona.

(b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.

(1) Issuing Court. A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.

(2) Combining or Separating a Command to Produce or to Permit Inspection. A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.

(3) Place of Appearance.

- (A) **Trial Subpoena.** Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.
- (B) **Hearing or Deposition Subpoena.** A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:
 - (i) the county in which the person resides or transacts business in person;
 - (ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or
 - (iii) such other convenient place fixed by a court order.

(4) Command to Attend a Deposition—Notice of Recording Method. A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.

(5) Objections; Appearance Required. Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or

attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

(c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.

(1) *Issuing Court.* If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.

(2) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.

(4) *Production of Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(5) Objections.

(A) Form and Time for Objection.

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.

(B) Procedure After an Objection Is Made.

(i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.

(ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

(iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

(C) Claiming Privilege or Protection.

(i) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(ii) If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(6) *Production to Other Parties.* Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).

(d) Service.

(1) *General Requirements; Tendering Fees.* A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) *Exceptions to Tendering Fees.* When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) *Service on Other Parties.* A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) *Service within the State.* A subpoena may be served anywhere within the state.

(5) *Proof of Service.* Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

(e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

(2) Quashing or Modifying a Subpoena.

(A) *When Required.* On the timely filing of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:

- (i) it fails to allow a reasonable time for compliance;
- (ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);
- (iii) it requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) it subjects a person to undue burden.

(B) *When Permitted.* On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:

- (i) it requires disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;
- (iii) It requires a person who is neither a party nor a party's officer to incur substantial travel expense; or
- (iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

- (i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).

(f) *Contempt.* The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

(g) *Failure to Produce Evidence.* If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

Credits

Amended July 17, 1970, effective Nov. 1, 1970; July 6, 1983, effective Sept. 7, 1983; Sept. 15, 1987, effective Nov. 15, 1987; Oct. 9, 1996, effective Dec. 1, 1996; June 9, 2005, effective Dec. 1, 2005; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

16 A. R. S. Rules Civ. Proc., Rule 45, AZ ST RCP Rule 45
Current with amendments received through 07/01/16

END OF DOCUMENT

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ATTACHMENT C

FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, 602-250-3376
Website: aps.com/newsroom

January 25, 2015

Page 1 of 2

APS INVESTED MORE THAN \$10 MILLION IN ARIZONA NONPROFITS IN 2015

PHOENIX – For more than 125 years, APS has understood that – as one of the only large corporations headquartered in the state – the company has a responsibility to not only provide reliable energy service to its 1.2 million customers, but to strengthen and empower the communities it serves. This belief is embedded in the culture of the company, and starts at the top.

APS announced today that its 2015 community investment in Arizona totaled more than \$10 million. This amount includes grants, sponsorships, and in-kind donations from APS and the [APS Foundation](#) to nonprofit organizations and educators throughout the state. In addition, APS employees donated more than 123,000 hours in volunteer time to Arizona nonprofits, an economic impact of \$2.8 million.

"Our long history in the state has shown us that the success of APS is closely tied to the prosperity and health of the communities we serve," said [Don Brandt](#), Chairman, President and CEO of APS. "We are committed to empowering nonprofits to do what they do best, and supporting education programs that will benefit our state's future leaders for years to come. This commitment is ingrained in our culture, and radiates through all of our 6,400 employees."

Among the nonprofits who received grants and contributions from APS and the APS Foundation in 2015:

- The Arizona Science Center received a grant for \$415,500 to support education programs throughout the state. The Science Center's Rural Communities Education Program targets educators from rural school districts, bringing professional development opportunities to STEM teachers across the state. Additional support also was designated for new exhibits.
- The Arizona Hispanic Chamber of Commerce Foundation received a grant for \$250,000 for the Ed and Verma Pastor Legacy Scholarship Program. This scholarship will benefit Latino students majoring in a STEM or a public policy field at any public university or college in Arizona.
- MIND Research Institute received a \$200,000 grant to expand its ST Math program and to partner with ASU to implement a professional development exploratory study with English-language learner students. These programs will expand innovative teaching to low-income students throughout Arizona and will train teachers to use a visual approach that deepens students' problem-solving and reasoning skills, helping them advance their mathematical knowledge.
- UMOM New Day Centers received a grant for \$150,000 to meet the needs of homeless women and families in Maricopa County. The funds will enable UMOM to provide comprehensive services, including housing, healthcare, vocational training and job placement, substance abuse counseling and housing service for residents while they focus on their case plan to end their homelessness.

- The Phoenix Symphony Association received \$225,000 from APS to deliver relevant and entertaining content to a broad range of constituencies and provide civic value through programs that benefit the needs of the community and foster a culture of creativity and innovation.
- The Navajo United Way received a grant for \$100,000 for its Operation Yellow Water Challenge Match. The Navajo United Way is working to ensure that farmers and communities impacted by the closure of the San Juan River, due to toxic waste contamination in August 2015, receive the support they need to irrigate fields and continue their livelihood.
- The Phoenix Art Museum received an \$85,000 grant to support exhibitions, education and The James K. Ballinger American Art and Education Fund.

In addition, in 2015 the APS Foundation supported programs that enhance academic achievement in the areas of Science, Technology, Engineering and Math (STEM):

- Arizona Science Teachers Association received a grant for \$86,000 for its Teacher Leadership Program.
- ASU Foundation for a New American University received a grant for \$80,000 for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers.
- Lowell Observatory received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program.
- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology through instruction in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation (SARSEF) received a \$50,000 grant to bring STEM education for students and teachers to 50 schools in low-income, rural areas.
- Teach for America Inc. received a grant of \$50,000 for its Math/Science initiative, which recruits highly qualified individuals to teach math and science in low-income schools and provides preparation and support to enhance teacher effectiveness.

About APS Foundation

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 to \$2.5 million per year through a bi-annual grant process. Since its inception, the Foundation has invested nearly \$35 million in Arizona nonprofits. For more information, please visit aps.com/corporategiving and click on the Foundation link.

About APS

APS, Arizona's largest and longest-serving electricity utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).



aps.com

FOR IMMEDIATE RELEASE

June 28, 2016

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Page 1 of 2

APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

Edington transitioning to advisory role; Bement, Cadogan promoted

PHOENIX – Arizona Public Service announced today changes in its senior leadership team at the Palo Verde Nuclear Generating Station. Bob Bement has been appointed Executive Vice President, Nuclear and will continue to report to Randy Edington, Executive Vice President and Chief Nuclear Officer. Jack Cadogan, currently Vice President, Nuclear Engineering, has been named to replace Bement as Senior Vice President, Site Operations. Maria Lacal will continue to serve as Senior Vice President, Regulatory and Oversight. Cadogan and Lacal will report to Bement.

On October 31, Bement will take over as Executive Vice President and Chief Nuclear Officer while Edington shifts to Executive Vice President and Advisor to the CEO.

"I want to thank Randy Edington for his great service to our customers, our company and our state over the past nine years," said Don Brandt, APS Chairman, President and Chief Executive Officer. "When Randy arrived, Palo Verde faced difficult regulatory and operational challenges. He put together a great team, which included Bob Bement, and more quickly than anyone thought possible, restored confidence and operational excellence at the plant. I am proud to say that under Randy's leadership, Palo Verde has become a model for other plants nationally and around the world as one of the best in the industry."

In 2015, Palo Verde generated a record 32.5 million megawatt-hours of carbon-free electricity, marking the 24th consecutive year the plant was the nation's largest power producer. Palo Verde remains the only U.S. generating facility to ever produce more than 30 million megawatt-hours in a year – an operational accomplishment the plant has achieved each of the past seven years and a total of 11 times. In addition, Palo Verde produces 80 percent of Arizona's clean electricity, displacing more than 13.2 million metric tons of greenhouse-gas emissions that would otherwise have been produced to power homes and businesses from Texas to California.

Bement has led the day-to-day nuclear operations at Palo Verde for the past nine years. Prior to joining APS shortly after Edington's arrival in 2007, he held senior nuclear leadership positions at Exelon and with Arkansas Nuclear One and began his nuclear career in the United States Navy as a nuclear-trained electrician.

"Bob Bement has served side-by-side with Randy at Palo Verde almost from Randy's first day at APS. Bob understands the plant culture and was essential in Palo Verde's return to excellence," said Brandt. "Randy and I have always agreed that the true measure of a leader is the organization's ability to excel after that leader is gone. In Bob, we have the ideal successor to continue Randy's outstanding work and to ensure Palo Verde's enduring industry leadership."

Cadogan, who has served as Palo Verde's vice president of nuclear engineering since 2012, will assume Bement's former responsibilities overseeing site operations. Cadogan joined APS in 2009 as director of engineering support before being promoted to director of plant engineering in 2011. In his most recent role, he has been responsible for plant design and project engineering, as well as the nuclear fuels function. Prior to joining APS, Cadogan spent 30 years in the energy industry, holding numerous positions in power plant operations support, design and construction.

Palo Verde is operated by APS and jointly owned by APS, Salt River Project, El Paso Electric Co., Southern California Edison Co., Public Service Co. of New Mexico, Southern California Public Power Authority and the Los Angeles Department of Water & Power.

APS, Arizona's largest and longest-serving electric utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).

PINNACLE WEST | NEWS

CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

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April 29, 2016

Page 1 of 4

PINNACLE WEST REPORTS 2016 FIRST-QUARTER EARNINGS

- *Results in line with the company's expectations; full-year 2016 earnings guidance affirmed*
- *Major planned fossil power plant outages increase operations and maintenance expenses versus a year ago*
- *Retail sales continue to improve as Arizona's economy continues post-recession growth*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$4.5 million, or \$0.04 per diluted share of common stock, for the quarter ended March 31, 2016. This result compares with \$16.1 million, or \$0.14 per diluted share, for the same period in 2015.

"Financial results were in line with our expectations, especially given the major fossil power plant overhauls and maintenance work that we had built into our budget," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "We remain optimistic that we will achieve our annual targets as customer and electricity sales growth continue to rebound, along with Arizona's improving economy."

Brandt cited a recent study by the U.S. Census Bureau that indicates the Phoenix-metropolitan area is the third-fastest growing of the top 15 metro areas in the U.S. A second report by Arizona's Office of Employment and Population Statistics shows the state has formally matched its pre-recession employment levels, amid expectations of continued solid growth in both population and jobs.

Looking to the immediate future, Brandt added that the company is focused on achieving constructive regulatory outcomes on a number of key energy policy issues, including Arizona's value and cost of distributed generation proceeding, as well as the company's upcoming rate case. "We will continue working with various stakeholders to achieve fair policies that benefit all our customers – and that help ensure a sustainable energy future for all of Arizona," he said.

The 2016 first-quarter results comparison was adversely impacted by increased operations and maintenance expenses, which decreased results by \$0.17 per share compared with the prior-year period. The expense increase was largely comprised of higher fossil plant maintenance costs as a result of more planned work being completed in the 2016 first quarter compared to the 2015 first quarter.

The above costs were partially offset by the following items:

- *The effects of weather variations* improved results by \$0.02 per share compared to the year-ago period despite temperatures that remained less favorable than normal. While residential heating degree-days (a measure of the effects of weather) were 57 percent higher than last year's first quarter, heating degree-days were still 18 percent below normal 10-year averages. A contributing factor was that February 2016 was the third-mildest February in the last 20 years and the fifth-mildest over the last 40 years.
- *Increased retail transmission revenue* positively impacted earnings by \$0.02 per share.
- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved earnings \$0.01 per share. Compared to the same quarter a year ago, weather-normalized sales increased 1.3 percent (partly the result of an additional day of sales due to the leap year), while total customer growth improved 1.3 percent quarter-over-quarter.
- *The net effect of miscellaneous items* increased earnings \$0.02 per share.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the first-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 first-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, April 29. A replay of the webcast can be accessed at pinnaclewest.com/presentations. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Friday, May 6, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13634257.

General Information

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of approximately \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at pinnaclewest.com.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit pinnaclewest.com/investors.

NON-GAAP FINANCIAL INFORMATION

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, and in Part II, Item 1A of the Pinnacle West/APS Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

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PINNACLE WEST | NEWS

CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

August 2, 2016

Page 1 of 4

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PINNACLE WEST REPORTS 2016 SECOND-QUARTER RESULTS

- *Hotter-than-normal weather positively impacted quarterly results*
- *Residential sales and customer growth improved as Arizona's economy keeps expanding*
- *Investments in planned fossil power plant maintenance and higher benefit costs contributed to increased O&M expenses versus a year ago*
- *Full-year 2016 earnings guidance maintained*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$121.3 million, or \$1.08 per diluted share of common stock, for the quarter ended June 30, 2016. This result compares with earnings of \$122.9 million, or \$1.10 per share, in the same 2015 period.

"Hotter-than-normal weather – led by the warmest June on record – positively impacted our earnings compared to the year-ago period," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "The favorable weather helped partially offset an increase in operations and maintenance expenses at a time when we are investing significant resources in planned fossil power plant overhauls and maintenance, as well as new customer information and outage management systems that will improve operational efficiencies, enhance reliability, and create a modernized energy system for all our customers."

In total, O&M expenses during the 2016 second quarter decreased results by \$0.19 per share compared with the prior-year-period. Quarter-over-quarter impacts primarily included the previously mentioned increase in planned fossil plant maintenance and higher employee benefit costs.

The favorable weather contributed \$0.09 per share to the company's bottom line compared to the year-ago period. Highlighted by record June heat, which helped offset a relatively mild April and May, the average high temperature in the 2016 second quarter was 94.5 degrees, while the average high temperature in the same period a year ago was 94.2 degrees. As a result, residential cooling degree-days (a measure of the effects of weather) were 4 percent higher than last year's second quarter, which was impacted by mild weather and one of the coolest Mays on record. Cooling degree-days also were more than 2 percent better than normal 10-year historical averages.

In addition to the effects of weather, the 2016 second-quarter results comparison was positively influenced by the following major factors:

- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved results \$0.04 per share. Underlining an improving Arizona economy, total customer growth was 1.4 percent quarter-over-quarter, and mirrors recent census population data that indicates Phoenix is one of the five fastest-growing cities in the U.S.
- *Adjustment mechanisms* improved earnings by \$0.04 per share compared to the 2015 second quarter. These adjustors included an increase in transmission revenues; revenue from the Company's AZ Sun Program; and higher lost fixed cost recovery (LFCR) revenue.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the second-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 second-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, August 2. The webcast can be accessed at pinnaclewest.com/presentations and will be available for replay on the website for 30 days. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Tuesday, August 9, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13639544.

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This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

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- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

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FOR IMMEDIATE RELEASE

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February 3, 2016

Page 1 of 2

**APS FOUNDATION AWARDS OVER \$2.9 MILLION IN 2015 TO NONPROFITS
WITH A FOCUS ON STEM EDUCATION IN ARIZONA**

PHOENIX – The APS Foundation is proud to be one of the leading supporters of science, technology, engineering and math (STEM) education in Arizona. Since 2012, the APS Foundation has focused its giving on STEM programs to benefit the state's students and teachers. In 2015, the Foundation distributed more than \$2.9 million to nonprofits across Arizona.

"APS is committed to supporting the outstanding organizations doing great work throughout Arizona, particularly in the area of STEM education," said Tina Marie Tentori, Executive Director of the APS Foundation. "Arizona jobs will increasingly depend on science, technology, engineering and math skills. These are the areas of study that drive today's global economy."

The first round of education grants was provided in June 2015 and totaled \$1.4 million to 17 organizations.

Nonprofits receiving grants from the APS Foundation for STEM-related programs in the Foundation's second round of grants for 2015 included:

- **Arizona Science Teachers Association** received a grant for \$86,000 for its Teacher Leadership Program, which provides access to professional development focused on research-based practices aimed at increasing student achievement, building and maintaining the leadership of Arizona science educators and providing resources and information for effective science education for students.
- **Valley of the Sun United Way** received an \$84,000 grant (the first of a three-year, \$250,000 commitment) for its Thriving Together program, a cross-sector collaboration working together to improve academic achievement in Arizona.
- **ASU Foundation for a New American University** received two grants totaling \$104,000. ASU Foundation received \$24,000 for its ExSciTEM (Exploring Science, Technology, Engineering and Math) program at ASU West and an \$80,000 grant for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers. This 10-day institute trains teachers how to integrate STEMSS across the curriculum through content lectures, hands-on activities, participation in science field studies and visits to local corporations showing STEM in practice.
- **Lowell Observatory** received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program, now in its 10th year. The program pairs a professional astronomer from Lowell with fifth through eighth grade reservation teachers for one school year. Astronomers visit the partner classroom to lead science discussions and hands-on activities in collaboration with the local teacher. Students also take a field trip to Lowell.

- **The Society of St. Vincent de Paul** received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology in STEM subjects.
- **The Southern Arizona Research Science and Engineering Foundation** received a \$50,000 grant to bring STEM education to 50 schools in low-income rural areas.
- **Southwest Autism Research and Resource Center (SARRC)** received a \$50,000 grant to expand the number of teachers and clinicians educating Arizona's autism population and supporting the educators and districts working with them.
- **West-MEC Alliance** received a \$50,000 grant for the APS Discover What's Within Program, which will enrich West-MEC's Southwest Campus with STEM programming.
- **Science Foundation Arizona** received \$25,000 for its Navajo Code Writers STEM Initiative, a program that will introduce computer code writing curriculum to prepare Navajo students for the global economy.
- **Experience Matters Consortium Inc.** received a \$15,500 grant for its Volunteers in Preparing Students for Success program that provides education and STEM career guidance to low-income high school students.
- **Yavapai College Foundation** received \$8,200 for College for Kids, a summer educational program providing STEM classes for children aged 5-17.
- **Boys & Girls Club of Greater Scottsdale** received a grant for \$6,500 for its Da Vinci Disciples and Johnny 5 Alive STEM-based programs.
- **Treasures 4 Teachers** received a \$5,000 grant to STEM educational kits for hands-on classroom projects.

Videos showcasing STEM success stories resulting from APS Foundation STEM investment can be viewed at aps.com/next.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so through supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 million to \$2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly \$38 million in Arizona nonprofits. For more information, please visit www.aps.com/corporategiving and click on the Foundation link.

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FOR IMMEDIATE RELEASE

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July 18, 2016

Page 1 of 2

APS FOUNDATION CONTINUES FOCUS ON STEM EDUCATION
More Than \$1.2 Million Awarded in First Round of 2016 Funding

PHOENIX – Fourteen nonprofit organizations located throughout Arizona and the Four Corners area will receive more than \$1.2 million in STEM-supported grants, the APS Foundation announced today. Supporting science, technology, engineering and math (also known as STEM) and other education programs has been the Foundation's principal focus since 2012.

"Arizona is blessed to have a number of local organizations doing impactful work in STEM educational areas," said Tina Marie Tentori, executive director of the APS Foundation. "These grants will help move their efforts forward, including encouraging and preparing Arizona students to pursue future jobs in technology, clean energy and other STEM-related careers."

The following nonprofits received grants from the APS Foundation:

- **American Indian College Fund** received a \$100,000 grant for a scholarship fund that provides financial support to 15 Navajo college students pursuing majors in STEM or related fields at Navajo Nation-serving tribal colleges and mainstream universities in Arizona and New Mexico, with a particular emphasis around the Four Corners region.
- **Arizona Center for Afterschool Excellence** received \$5,000 for its annual conference dedicated to training 700 childcare providers throughout Arizona on integrating STEM activities into daily programming.
- **Arizona Science Center** received a \$385,000 grant to support the continuation of its Professional Learning and Development Rural Communities Expansion Project, which helps integrate STEM curriculum into rural school districts, including grades 3-8 in Cottonwood, Oak Creek, Humboldt, Winslow, Prescott, Sedona, Tonopah, Florence and Yuma.
- **Flagstaff Chamber of Commerce Foundation** received a \$20,000 grant for its Ready.Set.Code. Digital Initiative which introduces area youth and teachers to the various roles and potential careers that make up the digital workplace eco-system.
- **HandsOn Greater Phoenix** received a \$10,000 grant for its Your Experience Counts academic mentoring program that trains volunteers to work alongside elementary teachers in the classroom, helping with academic improvement in reading, writing, math and science.
- **Audubon Arizona** received a \$25,000 grant for its River Pathways program, which introduces urban youth to environmental science-related careers and gives students access to natural resource professionals.
- **NTC Research Foundation** received a \$108,000 grant for its BrainSTEM program, which brings 45-minute live performances by professional actor/educators to rural schools to introduce STEM principles to low income 5th through 8th graders. The program will reach 20,000 students, 700 teachers and 50 schools.

- **Teach for America** received a \$50,000 grant for a targeted STEM initiative that will sponsor 10 math and science teachers in Title I schools in the Phoenix metropolitan area.
- **Valley of the Sun YMCA** received a \$45,000 grant for its STEM Thursdays program, which provides fun, engaging, hands-on group STEM learning projects and encourages low income elementary school students in the Valley, Yuma, Somerton and Flagstaff to pursue STEM careers.
- **Arizona Chamber Foundation** received a \$100,000 grant for A for Arizona, an initiative to improve and serve K-12 low-income schools throughout Arizona.

Additional organizations receiving grants during this funding cycle include: **Arizona State Parks Foundation, Expect More Arizona, Grand Canyon Association and Great Hearts Academies.**

The next cycle of APS Foundation grant applications opens on July 15 with a deadline of Sept. 1, 2016. Applications and more information on grant eligibility can be found at www.aps.com/corporategiving and clicking on the Foundation link.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so by supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

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CERTIFICATION OF SERVICE

On this 25 day of August, 2016, the foregoing document was filed with Docket Control as Correspondence from Commissioner Bob Burns and copies of the foregoing were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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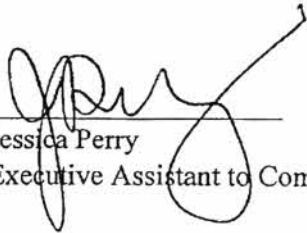
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EXHIBIT B

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Arizona Public Service Company, an Arizona public
service corporation, and Pinnacle West Capital
Corporation, an Arizona corporation,

Plaintiffs,

vs.

Commissioner Robert Burns, a member of the
Arizona Corporation Commission, in his official
capacity,

Defendant.

No. CV 2016-014895

**VERIFIED COMPLAINT FOR
SPECIAL ACTION AND
DECLARATORY JUDGMENT**

Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation
(collectively, the "Companies") for their Complaint against Defendant, allege as follows:

INTRODUCTION

This case involves the latest stage in a year-long campaign of harassment waged by an
Arizona Corporation Commissioner against the Companies for their perceived political speech.
During the 2014 election cycle, certain 501(c)(4) social welfare organizations made
expenditures in connection with Commission elections. Those organizations have not disclosed

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1 their donors under Arizona's campaign finance laws, and there is no suggestion that those
2 organizations violated Arizona law by failing to do so.

3 Nevertheless, based on speculation that the Companies may have donated to these
4 social welfare organizations, Defendant Commissioner Robert Burns has issued subpoenas (one
5 to APS, and one to Pinnacle West) compelling the Companies to open their books and publicly
6 divulge any political expenditures, charitable contributions, and lobbying expenditures they
7 may have made in the last five years. The subpoenas are attached as **Exhibit 1**.

8 To Plaintiff's knowledge, the subpoenas are unprecedented. Never before has a single
9 Commissioner, acting without the authority or approval of the Commission and without any
10 allegation of illegality, issued subpoenas compelling two companies to disclose information
11 regarding protected First Amendment activities that Arizona law does not require to be
12 disclosed. The Court should declare that the Commissioner's subpoenas go beyond his lawful
13 authority and enter an order prohibiting him from enforcing them.

14 **PARTIES, JURISDICTION, AND VENUE**

15 1. Plaintiff Arizona Public Service Company ("APS") is an Arizona public service
16 corporation that provides either retail or wholesale electric service to a large portion of the
17 State of Arizona.

18 2. Plaintiff Pinnacle West Capital Corporation ("Pinnacle West") is a publicly
19 traded corporation incorporated in Arizona. APS is a wholly-owned subsidiary of Pinnacle
20 West.

21 3. Defendant Commissioner Burns is one of five members of the Arizona
22 Corporation Commission, an entity created by Article XV, Section 1 of the Arizona
23 Constitution.

24 4. This Court has jurisdiction to hear and adjudicate this Complaint for Special
25 Action and to grant the relief requested under Article 6 § 18 of the Arizona Constitution, A.R.S.
26 §§ 12-123 and 12-1831, and Rule 1 of the Arizona Rules of Procedure for Special Actions.
27 Commissioner Burns has asserted authority to act, without the approval or authorization of the
28

Commission as a whole, to issue and enforce the subpoenas. Plaintiffs are, concurrently with this Complaint, seeking an order from the Arizona Corporation Commission quashing the subpoenas. However, given Commissioner Burns's assertion of authority to issue the subpoenas independent of any Commission action, Plaintiffs seek relief in this Court as well as before the Commission.

5. Plaintiffs lack an equally plain, adequate, and speedy remedy because A.R.S. § 40-254 provides for judicial review of Commission actions but does not expressly provide for review of actions taken by a single Commissioner without the approval of the Commission.

6. Venue is proper in this Court pursuant to A.R.S. § 12-401(16) and Rule 4 of the Arizona Rules of Procedure for Special Actions.

FACTUAL BACKGROUND

I. Commissioner Burns Requests That APS and Pinnacle West Voluntarily Abstain from Engaging in Protected First Amendment Activity.

7. On September 8, 2015, Commissioners Burns and Bitter Smith publicly issued a joint letter "request[ing] that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." [Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015). **Exhibit 2.**]

8. After emphasizing "APS's alleged contributions to political campaigns," the letter "acknowledge[d] that public service corporations have a First Amendment right to support the candidates of their choice" and that "this constitutional right carries with it the right to contribute to political campaigns."

9. The letter also conceded that the "laws governing campaign finance are not within the Commission's purview" and "at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws."

1 10. Nonetheless, Commissioners Burns and Bitter Smith asserted that they
2 personally “view it as unacceptable and inappropriate for public service corporations or others
3 to make campaign contributions in support of or in opposition to any candidate for the
4 Corporations Commission.” According to the letter, this was because such contributions could
5 negatively affect how the public perceived the Commission.

6 11. On October 23, 2015, the Companies responded to Commissioners Burns’s
7 “unusual” and “unprecedented” request and respectfully declined “to forfeit any of their First
8 Amendment rights to speak on public issues.” Noting the long-standing First Amendment
9 protection for corporations to engage in political speech, the Companies expressed concern
10 over “a request from governmental officials with great authority over APS to relinquish one
11 means of expression of this right.” The Companies also highlighted that Commissioner
12 Burns’s request would place APS at a severe disadvantage in the marketplace of ideas because
13 “significant political expenditures will undoubtedly be made by others” who are not regulated
14 by the Commission but who “have strong economic interests in Commission decisions.”
15 [Letter from Donald E. Brandt at 1-3, Docket No. AU-00000A-15-0309 (Oct. 23, 2015).
16 **Exhibit 3.**]

17 **II. Commissioner Burns Requests Records of Campaign Contributions to Confirm**
18 **That Ratepayer Funds Are Not Used for Political Speech.**

19 12. Commissioner Burns pressed ahead with his investigation into the Companies.
20 On November 30, 2015, he sent another letter stating that “in my opinion, your support for any
21 particular candidate should be open and transparent.” Based on that personal view about what
22 Arizona should (but does not) require, Commissioner Burns “ask[ed] APS to provide my office
23 with a full report of all spending related in any way to the 2014 election cycle.” The ostensible
24 purpose of the inquiry was “to find out if APS has spent ratepayer money to support or oppose
25 the election of Arizona Corporation Commission candidates” and “to ensure that only APS’s
26 profits are being used for political speech.” [Letter from Commissioner Burns 1, Docket No.
27 AU-00000A-15-0309 (Nov. 30, 2015). **Exhibit 4.**]

1 13. It would be impossible for APS to recover any 2014 political expenditures from
2 ratepayers, because (as explained in ¶¶ 36-47 below) its rates were set based on APS's
3 expenses in 2010, and because there is already an audit process in place, through APS's general
4 rate case, to ensure that political expenditures cannot be charged to customers in rates.

5 14. APS responded on December 29, 2015, confirming that "any political
6 contribution made by a public service corporation is not treated as an operating expense
7 recoverable in rates." [Letter from Donald E. Brandt 1, Docket No. AU-00000A-15-0309
8 (Dec. 29, 2015). **Exhibit 5.**]

9 **III. Undeterred, Commissioner Burns Broadens His Inquiry After APS Declined to**
10 **"Voluntarily" Pledge to Compromise Its First Amendment Rights.**

11 15. Apparently frustrated that the Companies would not agree to "voluntarily" be
12 cajoled into silence, on January 28, 2016, Commissioner Burns sent another letter that
13 "embark[ed] upon the next stage of my inquiry into APS's possible campaign contributions" in
14 the 2014 election cycle. [Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28,
15 2016). **Exhibit 6.**]

16 16. The January 28 letter stated that the investigation was prompted by the fact that
17 APS had "rejected [the] proposal" to "voluntarily agree to refrain from making political
18 contributions ... in the upcoming election cycle," and then had declined to "provide a report
19 listing any campaign contributions ... by APS in 2014."

20 17. Commissioner Burns announced his intent "to broaden my inquiry to include
21 funds expended on all political contributions, lobbying, and charitable contributions, *i.e.* all
22 donations made—either directly or indirectly—by APS or under APS's brand name for any
23 purpose."

24 18. Commissioner Burns did not, however, take any further action at that time, and
25 APS did not respond to the January 28 letter.

26 19. During an April 12, 2016, Commission meeting, Commissioner Burns
27 threatened to use his vote as a Commissioner as a "tool" to force APS's compliance with his
28

1 demands. Specifically, he stated, "All votes of this Commission are a tool to be used," and that
2 he "will not support any further action items requested by APS with the exception of an item
3 that might have health or safety components" until APS complied with his demands.
4 [Transcript of Open Meeting 12-13 (Apr. 12, 2016). **Exhibit 7.**]

5 20. Commissioner Burns's campaign website continues to advertise, as part of a
6 "[t]imeline of my battle with APS," that he announced in April that he "refuses to vote for APS
7 items until company discloses 'dark money' ties." [Commissioner Bob Burns website. **Exhibit**
8 **8.**]

9 **IV. Commissioner Burns Issues Subpoenas to the Companies and Demands a**
10 **Deposition of the Companies' CEO.**

11 21. Commissioner Burns' next move was to use the power of his office to force the
12 Companies to capitulate to his demands. Commissioner Burns timed the next stages of his
13 harassment of the Companies to coincide with pivotal points of his 2016 re-election campaign,
14 the first of which was the Republican primary on August 30, 2016.

15 22. At the same time, it was reported publicly that a 501(c)(4) organization, funded
16 by one or more parties appearing before the Commission, had begun spending money to
17 support Commissioner Burns's re-election.

18 23. Commissioner Burns first sought to use Commission resources to retain an
19 attorney for the purpose of investigating campaign expenditures in Commissioner elections.

20 24. Commissioner Burns explained that his investigation was designed to prevent
21 "utility overspending and overparticipating, if you will, in the elections of Corporation
22 Commissioners." [Transcript of Open Meeting 49 (Aug. 11, 2016). **Exhibit 9.**]

23 25. At the Commission's August 11 open meeting, the Commission declined to
24 authorize the expenditure of funds for such an investigation. [*Id.*]

25 26. Having failed to convince the Commission to bankroll his investigation, on
26 August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of this
27
28

1 Complaint. [Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25,
2 2016). **Exhibit 1.**]

3 27. In his cover letter issued with the subpoenas, Commissioner Burns explained
4 that he felt he needed to use the subpoena power because "APS has refused to voluntarily
5 answer my questions about any political expenditures that APS/Pinnacle West may have
6 made." [*Id.*]

7 28. Despite that it would be impossible for APS to have used ratepayer funds for
8 political expenditures, Commissioner Burns once again stated that his purpose was to
9 "determine whether APS has used ratepayer funds for political, charitable or other
10 expenditures." [*Id.*]

11 29. Among other things, Commissioner Burns ordered APS and Pinnacle West to
12 provide, by September 15, 2016, documents and information including:

- 13 (1) all documents "of any kind that describe arrangements governing Pinnacle
14 West's expenditures or donations of funds for any purpose under APS's name or
15 brand";
- 16 (2) all documents "of any kind that describe the arrangements governing the APS
17 Foundation's expenditures or donations of funds for any purpose under APS's
18 name or brand";
- 19 (3) for APS, in each year 2011-2016: "each charitable contribution," "each political
20 contribution," "each expenditure made ... for lobbying purposes," "each
21 marketing/advertising expenditure," and "a list of all expenditures to 501(c)(3)
22 and 501(c)(4) organizations";
- 23 (4) for Pinnacle West, in each year 2011-2016: "all charitable contributions," "all
24 donations for political purposes," "all expenditures to 501(c)(3) organizations,"
25 "all expenditures to 501(c)(4) organizations," and "each marketing/advertising
26 expenditure."
- 27 (5) information on "any foundations or other entities (formed for charitable or other
28 philanthropic purposes) that are related to APS and/or Pinnacle West," including
"how these entities are funded."

[**Exhibit 1.**]

1 30. In addition, Commissioner Burns seeks to compel the Companies' CEO Donald
2 Brandt to appear for testimony on October 6, 2016, regarding the topics covered in the
3 subpoenas.

4 31. The date October 6, 2016, has no relevance to any proceeding before the
5 Commission, but it is six days before early voting begins for the November general election.

6 32. The Companies' CEO is not the appropriate, most knowledgeable corporate
7 representative to offer testimony regarding "ratepayer funds" and political or charitable
8 contributions and lobbying expenses.

9 33. In addition to these demands, Commissioner Burns threatens in his cover letter
10 that he "intend[s] to publicly file all documents related to this investigation."

11 34. The subpoenas were served on August 26, 2016.

12 35. On information and belief, no other entities have been subpoenaed for the type
13 of information Commissioner Burns seeks to compel from the Companies, including other
14 entities that may have made political expenditures in connection with the Corporation
15 Commission elections.

16 **V. Any Political or Charitable Expenses Are Irrelevant to the Commission's**
17 **Approved Rates.**

18 36. Although Commissioner Burns has asserted that his purpose is to ensure that
19 ratepayer funds are not used for political expenditures or charitable contributions, this is a
20 pretext. Political expenditures or charitable contributions have no connection with ratepayer
21 funds. It is APS and the Commission's long-standing policy that both are excluded from
22 ratemaking.

23 37. Ratepayer funds are the revenue customers pay pursuant to the rates set by the
24 Corporation Commission. A principal role of the Corporation Commission is to set "just and
25 reasonable rates" to be charged by public service corporations such as APS. *See* Ariz. Const.
26 Art. XV, § 3.

1 38. In general, the rates the Commission sets “should be sufficient to meet a utility’s
2 operating costs and to give the utility and its stockholders a reasonable rate of return on the
3 utility’s investment.” *Residential Utility Consumer Office v. Ariz. Corp. Comm’n*, 199 Ariz.
4 588, 591 (App. 2001).

5 39. Utility rates are set in rate case proceedings. In those proceedings, the
6 Commission reviews the utility’s books and records for a “test year”—a specified twelve-
7 month period—and uses data from that test year to determine the amount of revenue the utility
8 requires to cover its costs. *See* Ariz. Admin. Code 14-2-103.

9 40. In the rate case proceeding, the Commission examines all of the operating
10 expenses incurred in the test year and claimed by the utility, as well as the value of the utility’s
11 invested capital in the test year. Commission Staff performs an audit of the operating expenses
12 claimed by the utility to ensure that those expenses are eligible to be recovered through
13 customer rates. In addition, an independent accounting firm also reviews APS’s books to
14 ensure that all expenses are properly classified.

15 41. APS’s current rates were set following a full rate case based on a 2010 test year.
16 Thus, with the exception of certain adjustor mechanisms that account for specified expenses
17 outside the test year (which are not relevant here), the current rates reflect solely the operating
18 expenses incurred in 2010 that APS claimed in its rate case should be recovered from
19 ratepayers. If APS incurred other expenses in 2010, but did not seek their recovery in its rate
20 case, those other expenses would not be reflected in rates. [*See also* Letter to Mark Brnovich,
21 Arizona Attorney General, from Chairman Doug Little, Docket No. AU-00000A-15-0309 (Feb.
22 22, 2016). **Exhibit 10.**]

23 42. APS does not, has not, and will not seek to include any political contributions in
24 the costs it seeks to recover from ratepayers.

25 43. The Commission’s own decisions prohibit a public service corporation from
26 including charitable contributions in rates. *See In re Application of Sulphur Springs Valley*
27 *Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009).

1 44. Pinnacle West is not a regulated entity and does not recover its operating
2 expenses in rates.

3 45. Pinnacle West does provide business services to APS. To the extent APS seeks
4 to recover in rates the cost of paying Pinnacle West for those business services, the relevant
5 expenses would be submitted as part of the test-year ratemaking described above and subjected
6 to Commission review and audit before they could be included in rates.

7 46. APS's currently pending rate case is based on a 2015 test year, meaning that
8 only operating expenses from 2015 will have any relevance to rates paid by customers (again,
9 with the exception of certain rate adjustors for specified expenses not relevant here). Those
10 rates will be established by a future Commission decision on APS's current rate case. Before
11 such a decision is issued, Commission Staff will have the opportunity to examine and audit any
12 operating expenses claimed by APS to ensure that they are recoverable in customer rates. In
13 fact, Commissioner Burns, already possesses information from 2010 and 2015 related to
14 expenses recoverable from rates.

15 47. Thus, any expenses—for any purpose—APS incurred in 2011, 2012, 2013, or
16 2014 are irrelevant to the rates customers pay, because those rates are based solely on the 2010
17 test year. Likewise, expenses incurred by Pinnacle West are not relevant.

18 **COUNT ONE**

19 **(Declaratory Judgment – First Amendment)**

20 48. The Companies incorporate the preceding paragraphs of this Complaint as if
21 fully set forth here.

22 49. The First Amendment and Article II, Section 6 of the Arizona Constitution
23 protect the exercise of free speech against government infringement. The First Amendment
24 “has its fullest and most urgent application to speech uttered during a campaign for political
25 office.” *Citizens United v. Fed. Elections Comm'n*, 558 U.S. 310, 339 (2010) (quoting *Eu v.*
26 *San Francisco Cnty. Democratic Central Comm.*, 489 U.S. 214, 223 (1989)) (internal quotation
27 marks omitted).

28

1 50. In addition, the “decision to remain anonymous . . . is an aspect of the freedom
2 of speech protected by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S.
3 334, 342 (1995).

4 51. “The First Amendment protects political association as well as political
5 expression,” *Buckley*, 424 U.S. at 15 (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)), and the
6 right to political association includes association through financial contribution to political
7 activities or charitable organizations. *Id.* at 65.

8 52. In light of these principles, the requirement to disclose political expenditures is
9 subjected to, at a minimum, “exacting scrutiny,” which requires that a disclosure requirement
10 be justified by a “sufficiently important government interest” that has a “substantial relation” to
11 the disclosure requirement. *Citizens United*, 558 U.S. at 366-67.

12 53. The justifications advanced for Commissioner Burns’s subpoenas are not
13 important governmental interests, and the subpoenas’ selective targeting of only two entities for
14 disclosure does not have a substantial relation to any legitimate government objective.

15 54. Aside from restricting disclosure regulations to those that meet exacting
16 scrutiny, the First Amendment also prohibits viewpoint discrimination—speech restrictions
17 based on the identity or viewpoint of a speaker. *Citizens United*, 558 U.S. at 340.

18 55. Commissioner Burns’s subpoenas are targeted at APS and Pinnacle West and no
19 other parties. Other speakers with different viewpoints who have spent significant amounts on
20 political expenditures would not be subject to the same constraints as APS and Pinnacle West.

21 56. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a
22 judicial determination and declaratory judgment that Commissioner Burns’s subpoenas are
23 unlawful and unenforceable because they constitute unconstitutional viewpoint-based
24 discrimination in violation of the First Amendment and Article II, Section 6 of the Arizona
25 Constitution, and because they fail to satisfy the kind of exacting scrutiny required to justify
26 compelled disclosure of political expenditures.

27 **COUNT TWO**
28

1 **(Declaratory Judgment – Improper and Retaliatory Purpose Under Arizona Law)**

2 57. The Companies incorporate the preceding paragraphs of this Complaint as if
3 fully set forth herein.

4 58. An administrative subpoena may not be issued for an improper, retaliatory
5 purpose.

6 59. Furthermore, a subpoena for deposition may not be used to impose undue
7 burden, annoyance, embarrassment, or oppression. Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P.
8 26(c)(1). Efforts to depose high-ranking company officials are particularly prone to abuse.

9 60. Commissioner Burns's subpoenas seek information that has no relevance to the
10 Commission's regulatory function. The regulation of campaign finance expenditures is not
11 within the scope of authority of the Corporation Commission. The Arizona Constitution, the
12 Arizona Legislature and the citizens of Arizona through the initiative process have expressly
13 delegated the regulation of campaign finance, including disclosure of political expenditures, to
14 other branches of government.

15 61. Commissioner Burns also lacks authority to subpoena documents in the absence
16 of any allegation of wrongdoing and disconnected from any Commission-authorized
17 investigation.

18 62. On information and belief, the true purpose of Commissioner Burns's subpoenas
19 is to exact political retribution for APS's refusal to abide by Commissioner Burns's request that
20 it refrain from political speech and to deter political speech by APS and Pinnacle West. This is
21 confirmed by his threat to publicly disseminate the information he gathers from the subpoenas,
22 despite directly contrary statutory protections of confidential information pursuant to
23 A.R.S. § 40-204(C).

24 63. The subpoenas were issued for improper and retaliatory purposes.

25 64. The subpoenas' demand to depose the Companies' CEO is itself unduly
26 oppressive harassment and only amplifies the improper and retaliatory purpose of the
27 subpoenas as a whole.
28

1 65. Commissioner Burns's pledge to publicly disseminate the information gathered
2 in the subpoenas is unduly oppressive harassment and amplifies the improper and retaliatory
3 purpose of the subpoenas as a whole.

4 66. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a
5 judicial determination and declaratory judgment that (1) Commissioner Burns's subpoenas are
6 unlawful and unenforceable because they were issued for an improper and retaliatory purpose
7 in violation of Arizona law, (2) the subpoenas' demand for a deposition of the Companies'
8 CEO is unlawful and unenforceable because it is an unreasonably burdensome effort to harass
9 the Companies, and (3) the threatened dissemination of confidential information gathered
10 through the subpoena power is unlawful.

11 **COUNT THREE**

12 **(Special Action – Prohibition)**

13 67. The Companies incorporate the preceding paragraphs of this Complaint as if
14 fully set forth here.

15 68. Despite the unlawful purposes and requests made in his subpoenas,
16 Commissioner Burns has stated that he intends to enforce his unlawful subpoenas against the
17 Companies, including punishing the Companies for contempt if there is non-compliance.

18 69. Commissioner Burns is therefore proceeding or threatening to proceed without
19 or in excess of legal authority.

20 70. The Companies have no plain, adequate and speedy remedy at law to prohibit
21 Commissioner Burns from enforcing his subpoena.

22 71. Therefore, the Companies request that this Court provide special action relief in
23 the nature of a writ of prohibition to prohibit the Commissioner from enforcing the subpoenas
24 served on August 26, 2016.

25
26 WHEREFORE, Plaintiffs respectfully request this Court to enter judgment:
27
28

A. For a declaratory judgment that Commissioner Burns's subpoenas served on the Companies on August 26, 2016, are contrary to law.

B. For special action relief in the nature of a writ of prohibition prohibiting the Commissioner from enforcing the subpoenas served on the Companies on August 26, 2016.

C. For attorneys' fees pursuant to A.R.S. § 12-348 and any other applicable statute or common law theory for attorneys' fees.

D. For taxable costs and nontaxable costs as may be allowed by law.

E. For such other relief as the Court deems just and equitable.

DATED this 9th day of September, 2016.

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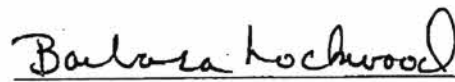
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VERIFICATION

Barbara Lockwood, being first duly sworn, states:

1. I am authorized to verify the foregoing Verified Complaint on behalf of Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation. No single person associated with Plaintiffs has personal knowledge of all the facts set forth in the Verified Complaint. Rather, the facts in the Verified Complaint have been compiled from relevant sources held by Plaintiffs. With these qualifications, I am authorized to state that the facts set forth in the foregoing Verified Complaint are true and correct, except matters stated on information and belief, which matters Plaintiffs believe to be true.
2. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9 day of September, 2016.



Barbara Lockwood
Vice President, Regulation

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16 SUPERIOR COURT OF ARIZONA

17 MARICOPA COUNTY

18 Arizona Public Service Company, an Arizona
19 corporation, and Pinnacle West Capital Corporation,
20 an Arizona corporation,

21 Plaintiffs,

22 vs.

23 Commissioner Robert Burns, a member of the
24 Arizona Corporation Commission, in his official
25 capacity,

26 Defendant.

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No. CV 2016-014895

APPLICATION FOR
AND MEMORANDUM OF
POINTS AND AUTHORITIES
IN SUPPORT OF
PRELIMINARY INJUNCTION

And

APPLICATION FOR ORDER
TO SHOW CAUSE

Pursuant to Ariz. R. Civ. P. 65, Plaintiffs Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West"), APS's parent company, collectively, the "Companies," respectfully move for a preliminary injunction restraining Arizona Corporation Commissioner Burns from compelling the production of documents, responses to information requests, and testimony pursuant to subpoenas he served on the Companies on August 26, 2016. This application is supported by the Companies' Verified Complaint.

INTRODUCTION

Last summer, media reports speculated that the Companies donated money in 2014 to certain politically active 501(c)(4) social welfare organizations. Arizona law permits such contributions and does not require their public disclosure. Nevertheless, Commissioner Burns—who is up for reelection this fall—asked the Companies "voluntarily" to refrain from any political expenditures in the 2016 election cycle. When the Companies refused to muzzle themselves, Commissioner Burns asked APS to produce any records of its political expenditures in 2014. When APS demurred, Commissioner Burns launched an investigation that culminated in the challenged subpoenas, which compel APS and Pinnacle West to provide written information concerning, among other things, their charitable contributions, political expenditures, and lobbying expenditures made between 2011 and 2016. The subpoenas also compel testimony by CEO Don Brandt on October 6, 2016. To the Companies' knowledge, never before has a single Commissioner issued a subpoena targeted at a company's political expression, disconnected from any Commission-authorized investigation, without any allegation of illegality.

This Court should issue a preliminary injunction suspending any obligation to comply with the subpoena. *See Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500 (1982). **First**, the subpoenas are massively overbroad relative to any purportedly legitimate purpose. To give his investigation a sheen of legitimacy, Commissioner Burns has repeatedly insisted that its purpose is to ensure that ratepayers are not being charged for APS's charitable contributions, political expenditures, and lobbying expenses. But, as explained below and as Commissioner Burns should well understand, the bulk of information sought by the subpoenas is patently irrelevant to that stated purpose. Thus, the Court should enjoin their enforcement as seeking

1 irrelevant information, unduly burdensome, and calculated to harass.

2 *Second*, the subpoenas violate the First Amendment. The context makes clear that, in
3 reality, the subpoenas are intended as payback for the Companies' refusal to "voluntarily" refrain
4 from speech during the current election season and are calculated to deter the Companies'
5 political expression. Commissioner Burns has admitted as much: he publicly described the
6 purpose of his inquiry as to prevent "utility overspending and overparticipating ... in the elections
7 of Corporation Commissioners." Complaint ¶ 24 & Ex. 9. The First Amendment does not
8 allow government officials to issue subpoenas to retaliate against or discourage political speech.

9 *Third*, Commissioner Burns lacks authority under Arizona law to issue the subpoena. To
10 the extent that the subpoenas are motivated by the Commissioner's own personal "view [that] it
11 [is] unacceptable and inappropriate for public service corporations or others to make campaign
12 contributions," Complaint ¶ 10 & Ex. 2, that view has not been shared by the Legislature, which
13 is tasked by the Constitution with regulating campaign finance, or by the citizens of Arizona who
14 exercise lawmaking power through the initiative process. Commissioner Burns may not use
15 subpoenas to override this legislative judgment.

16 *Fourth*, underscoring the subpoena's improper motivation, Commissioner Burns has
17 demanded to depose the Companies' CEO Don Brandt, even though Mr. Brandt is not the most
18 knowledgeable witness about the expenses APS seeks to recover through rates. The Court should
19 not allow Commissioner Burns to use subpoenas to engineer a pre-election spectacle.

20 *Fifth*, further confirming the improper motive, Commissioners Burns has indicated his
21 intention to make public all records he receives, without regard to whether they are business
22 confidential. That flatly violates Arizona law, and plainly is calculated to harass.

23 The Court should declare that the Commissioner's subpoenas go beyond his lawful
24 authority and enter an order enjoining enforcement of the subpoenas.

25 **FACTUAL BACKGROUND**

26 Last summer, following speculation in the media that APS had contributed money to
27 501(c)(4) organizations that were active in the 2014 elections for Corporation Commission, and
28 in advance of his own reelection bid this year, Commissioner Burns launched his effort to deter

1 any participation by the Companies in the political process. On September 8, 2015,
2 Commissioners Burns and Bitter Smith publicly issued a joint letter noting “APS’s alleged
3 contributions to political campaigns” and “request[ing] that all public service corporations and
4 unregulated entities that appear before the Commission agree to voluntarily refrain from making
5 campaign contributions in support of or in opposition to Corporation Commission candidates.”
6 Complaint ¶¶ 7-8 & Ex. 2. Although the Commissioners acknowledged that “laws governing
7 campaign finance are not within the Commission’s purview” and that there were no allegations
8 of any illegality, they nevertheless stated that they personally “view it as unacceptable and
9 inappropriate for public service corporations or others to make campaign contributions in support
10 of or in opposition to any candidate for the Corporations Commission.” *Id.* ¶¶ 9-10 & Ex. 2.

11 On October 23, 2015, the Companies responded and respectfully declined “to forfeit any
12 of their First Amendment rights to speak on public issues.” Complaint ¶ 11 & Ex. 3. Undaunted,
13 Commissioner Burns pressed ahead. On November 30, 2015, he sent another public letter to
14 APS stating that “in my opinion, your support for any particular candidate should be open and
15 transparent.” Complaint ¶ 12 & Ex. 4. Based on that personal opinion, Commissioner Burns
16 “ask[ed] APS to provide my office with a full report of all spending related in any way to the
17 2014 election cycle.” *Id.* The ostensible purpose was “to find out if APS has spent ratepayer
18 money to support or oppose the election of Arizona Corporation Commission candidates” and
19 “to ensure that only APS’s profits are being used for political speech.” *Id.*

20 APS responded on December 29, 2015, confirming that “any political contribution ... is
21 not treated as an operating expense recoverable in rates.” Complaint ¶ 14 & Ex. 5.

22 In a January 28, 2016 letter, Commissioner Burns “embark[ed] upon the next stage of
23 [his] inquiry into APS’s possible campaign contributions” in the 2014 election cycle. Complaint
24 ¶ 15 & Ex. 6. The letter explained that this “next stage” was necessary because APS had “rejected
25 [the] proposal” to “voluntarily agree to refrain from making political contributions ... in the
26 upcoming election cycle,” and then had declined to “provide a report listing any campaign
27 contributions ... by APS in 2014.” Complaint ¶ 16 & Ex. 6. Commissioner Burns announced
28 his intent “to broaden my inquiry to include funds expended on all political contributions,

1 lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—by
2 APS or under APS’s brand name for any purpose.” APS did not respond.

3 However, during a Commission meeting on April 12, 2016, Commissioner Burns
4 declared that “[a]ll votes of this Commission are a tool to be used,” and that he “will not support
5 any further action items requested by APS with the exception of an item that might have health
6 or safety components” until APS complied with his demands. Complaint ¶ 19 & Ex. 7.

7 In August 2016, Commissioner Burns announced his intent to use Commission resources
8 to retain an attorney to investigate campaign expenditures in Commissioner elections to prevent
9 “utility overspending and overparticipating, if you will, in the elections of Corporation
10 Commissioners.” Complaint ¶¶ 23-24 & Ex. 9. On August 11, the Commission declined to
11 authorize any expenditure for such an investigation. Complaint ¶ 25 & Ex. 9.

12 On August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of
13 this Complaint. Complaint ¶ 26 & Ex. 1. A cover letter justified the subpoenas on the ground
14 that “APS has refused to voluntarily answer my questions about any political expenditures that
15 APS/Pinnacle West may have made,” and that subpoenas were needed to “determine whether
16 APS has used ratepayer funds for political, charitable or other expenditures.” Complaint ¶¶ 27-
17 28 & Ex. 1. Commissioner Burns stated that he “intend[s] to publicly file all documents related
18 to this investigation.” Complaint ¶ 33 & Ex. 1.

19 The subpoenas ordered APS and Pinnacle West to provide, by September 15, 2016,
20 documents and information including: (1) all documents “of any kind that describe arrangements
21 governing Pinnacle West’s expenditures or donations of funds for any purpose under APS’s name
22 or brand”; (2) all documents “of any kind that describe the arrangements governing the APS
23 Foundation’s expenditures or donations of funds for any purpose under APS’s name or brand”;
24 (3) for APS, in each year 2011-2016: “each charitable contribution,” “each political
25 contribution,” “each expenditure made ... for lobbying purposes,” “each marketing/advertising
26 expenditure,” and “a list of all expenditures to 501(c)(3) and 501(c)(4) organizations”; (4) for
27 Pinnacle West, in each year 2011-2016: “all charitable contributions,” “all donations for political
28 purposes,” “all expenditures to 501(c)(3) organizations,” “all expenditures to 501(c)(4)

1 organizations,” and “each marketing/advertising expenditure”; and (5) information on “any
2 foundations or other entities (formed for charitable or other philanthropic purposes) that are
3 related to APS and/or Pinnacle West,” including “how these entities are funded.” Complaint ¶ 29
4 & Ex. 1. In addition, the subpoenas demand that the Companies’ CEO Donald Brandt appear for
5 testimony on October 6, 2016. Complaint ¶ 30 & Ex. 1. The subpoenas were served on August
6 26, 2016. Complaint ¶ 34.

7 STANDARD OF REVIEW

8 “When an Arizona administrative agency unreasonably infringes on the liberties of a
9 corporation, ... the Arizona courts ... must be able to curb the abuse of power ... Thus, if an
10 administrative agency’s investigation becomes a tool of harassment and intimidation rather than
11 a means to gather appropriate information, the appropriate court may intrude and stop the
12 incursion into the constitutional liberties of the parties under investigation.” *Polaris*, 133 Ariz.
13 At 506-07. “[A] party may resist [the] Commission’s subpoena on grounds that the inquiry is
14 not within its scope of authority, the order is too vague, the subpoena seeks irrelevant
15 information, or the investigation is being used for an improper purpose, such as to harass.”
16 *Carrington v. Ariz. Corp. Comm’n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000).¹

17 “A party seeking a preliminary injunction must show a strong likelihood of success on
18 the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships
19 weighing in his favor, and public policy favoring the requested relief.” *TP Racing, L.L.P. v.*
20 *Simms*, 232 Ariz. 489, 495 ¶ 21 (App. 2013). “A court applying this standard may apply a ‘sliding
21 scale.’” *Ariz. Ass’n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12 ¶ 12 (App.
22 2009). “In other words, the moving party may establish either 1) probable success on the merits
23 and the possibility of irreparable injury; or 2) the presence of serious questions and that the
24 balance of hardships tips sharply in favor of the moving party.” *Id.* (quotations and alterations
25 omitted).

26
27 ¹ Here, the subpoenas have *not* been issued by the Commission, but instead by Commissioner Burns acting alone.
28 Because Commissioner Burns’ actions are unprecedented, the proper procedural path for challenging the subpoenas
is unclear. Out of an abundance of caution, the Companies have filed a motion to quash before the Commission
contemporaneously with the filing of this lawsuit and motion for preliminary injunction. The Companies have also
lodged objections with Commissioner Burns.

1 ARGUMENT

2 **I. THE COMPANIES ARE LIKELY TO PREVAIL ON THE MERITS.**

3 **A. The Bulk of the Information Sought Is Irrelevant to Ratepayer Protection.**

4 Commissioner Burns has claimed the subpoenas are justified to assure that ratepayers are
5 not being charged for charitable, political, or lobbying expenditures. *See* Complaint ¶¶ 12, 26,
6 33 & Exs. 3, 8. However, the bulk of the information sought by the subpoenas is irrelevant to
7 that purpose. *See Carrington*, 199 Ariz. At 305 ¶ 9 (Commission subpoena may not “seek[]
8 irrelevant information”).

9 Utility rates are set in rate case proceedings in which the Commission reviews the utility’s
10 books and records for a “test year”—a specified twelve-month period—and uses data from that
11 test year to determine the amount of revenue the utility requires to cover its costs. *See* Ariz.
12 Admin. Code 14-2-103; *Tucson Elec. Power Co. v. Ariz. Corp. Comm’n*, 132 Ariz. 240, 246
13 (App. 1982) (describing use of test year); Complaint ¶¶ 36-47 (describing ratemaking process);
14 *see generally, e.g., In re Arizona Pub. Serv. Co.*, 258 P.U.R.4th 353 (A.C.C. June 28, 2007).
15 Specifically, the Commission examines all operating expenses claimed by the utility and the
16 value of the utility’s invested capital (or “rate base”) during the test year. Complaint ¶¶ 38-39.
17 Commission Staff performs an audit to ensure that the operating expenses claimed by the utility
18 are in fact recoverable in rates. *Id.* ¶ 40. An independent accounting firm also reviews APS’s
19 books to ensure that all expenses are properly classified. *Id.* Based on the operating expenses
20 incurred in the test year and deemed to be recoverable, and based on the utility’s invested capital
21 in the test year multiplied by a fair rate of return, the Commission determines the utility’s revenue
22 requirement. *Id.* ¶¶ 37-40. It then uses that revenue requirement to set the rates that the utility
23 will collect going forward. *Id.* ¶ 41. Once set, rates are not adjusted to reflect changes in
24 operating expenses or rate base, until the utility undertakes a new ratemaking based on a more
25 recent test year. *Id.* ¶ 41; Complaint Ex. 10.²

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27
28 ² The one exception are expenses that may be recovered through adjustor mechanisms. These expenses are specified
in Commission Orders, are transparently calculated and updated in Commission dockets, and do not include the
types of expenses at issue in the subpoena.

1 APS's current rates were set based on a 2010 test year. Complaint ¶ 41. In other words,
2 the current rates reflect solely the operating expenses that APS incurred in 2010 and for which it
3 claimed recovery, and that the Commission found to be recoverable after the Staff's audit. *Id.*
4 ¶¶ 40-41.³ If APS incurred other expenses in 2010, but did not seek their recovery, those other
5 expenses would not be reflected in rates. *Id.* ¶ 41. Currently, APS is seeking new rates, based
6 on a 2015 test year. Thus, these new rates will reflect only 2015 operating expenses claimed by
7 APS and found to be recoverable after an audit. Any expenses APS incurred in 2011, 2012,
8 2013, 2014, and 2016 are categorically irrelevant to the rates customers currently pay or will pay
9 under the new rates, because those rates—as just explained—are based solely on expenses
10 incurred in the test year (2010 for current rates, and 2015 for proposed new rates). Pinnacle
11 West, meanwhile, is not a regulated entity and does not recover its operating expenses in rates.⁴

12 Accordingly, the bulk of the information demanded by Commissioner Burns is irrelevant
13 to the advertised purpose of the subpoena. APS should not be compelled to produce documents,
14 information, or testimony relating to its expenses in any year other than a test year. And Pinnacle
15 West should not be compelled to produce any documents or testimony at all.

16 **B. The Subpoenas Violate the First Amendment.**

17 The First Amendment “has its fullest and most urgent application to speech uttered during
18 a campaign for political office.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339
19 (2010). “Corporations..., like individuals, contribute to the discussion, debate, and the
20 dissemination of information and ideas that the First Amendment seeks to foster.” *Id.* at 343
21 (internal quotation marks omitted). “The First Amendment protects political association as well
22 as political expression,” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (citing *NAACP v. Alabama*, 357
23

24 ³ APS has made clear that it did not and will not seek to include any political contributions in the expenses it seeks
25 to recover in rates. See Complaint ¶ 42 & Ex. 5. Likewise, charitable contributions may not be recovered in rates.
26 See *In re Application of Sulphur Springs Valley Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009). APS
27 likewise does not seek to recover lobbying expenses in rates. The Commission has held that if APS does seek to
28 recover any of its lobbying costs in rates as useful to customers, “APS must provide the itemized lobbying costs
associated with each benefit it alleges resulted from the specific lobbying activity.” *In re Arizona Pub. Serv. Co.*,
258 P.U.R.4th 353 (A.C.C. June 28, 2007).

⁴ Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of
paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year
ratemaking described above and subjected to Commission review and audit before they could be included in rates.

1 U.S. 449 (1958)), which encompasses financial contribution to political activities or charitable
2 organizations. *Id.* at 65. Strong First Amendment interests also exist in anonymous speech.
3 *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342-43 (1995). Consequently, compelled
4 disclosure of political or charitable contributions can violate First Amendment rights. *Buckley*,
5 424 U.S. at 64; *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008).

6 ***1. The Subpoenas Discriminate Against the Companies Based on Their***
7 ***Viewpoint and Are Calculated to Discourage Political Speech.***

8 Commissioner Burns' subpoenas violate the First Amendment for the independent reason
9 that they discriminate based on viewpoint and are calculated to deter political speech. Indeed,
10 they are a textbook example of the kind of abuse the First Amendment protects against. The
11 subpoenas are aimed selectively at two companies after they refused to "voluntarily" abstain
12 from political speech—companies against which Commissioner Burns is campaigning in seeking
13 reelection. Complaint Ex. 8 (Commissioner Burns' website describing "my battle with APS" as
14 his top issue). Government action burdening speech violates the First Amendment when it is
15 "adopted or is enforced in order to harass," *Citizens United*, 558 U.S. at 370, such as when it
16 discriminates based on the speaker's viewpoint or is calculated to deter expression.

17 That is the case here. *First*, the subpoenas compel disclosure selectively based on the
18 viewpoint and identity of the speaker. From the very start of his inquiry, Commissioner Burns
19 has focused on "APS's alleged contributions to political campaigns," Complaint ¶ 8 & Ex. 1, and
20 has railed against "*utility* overspending and overparticipating" in Commission elections.
21 Complaint ¶ 22 & Ex.7 (emphasis added). Other speakers with viewpoints more aligned with
22 Commissioner Burns, such as the rooftop solar industry that reportedly has spent heavily on
23 Corporation Commission elections,⁵ are not and would not be subject to any disclosure
24 requirement. In fact, the Companies would be the only corporations in Arizona subject to this
25 disclosure mandate. Such selective regulation flatly violates the First Amendment. "[T]he First
26 Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too,
27 are restrictions distinguishing among different speakers, allowing speech by some but not

28 ⁵ See, e.g., Howard Fischer, *Solar Interests Pour Money Into Corp Comm Race*, Capitol Media Services, Aug. 29, 2016.

1 others.” *Citizens United*, 558 U.S. at 340 (internal citations, quotation marks omitted); *see also*
2 *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995)
3 (“Discrimination against speech because of its message is presumed to be unconstitutional....
4 The government must abstain from regulating speech when the specific motivating ideology or
5 the opinion or perspective of the speaker is the rationale for the restriction.”).

6 *Second*, the subpoenas are intended to accomplish through different means what
7 Commissioner Burns failed to achieve when the Companies refused to refrain “voluntarily” from
8 future political expenditures. Commissioner Burns stated that he was “broaden[ing]” his inquiry
9 and “requir[ing]” cooperation because APS had refused to accede to his demands. Complaint ¶¶
10 15-17 & Ex.5. That kind of retaliation is plainly unlawful. *See Wilkie v. Robbins*, 551 U.S. 537,
11 555 (2007) (noting the “longstanding recognition that the Government may not retaliate for
12 exercising First Amendment speech rights”); *see also White v. Lee*, 227 F.3d 1214, 1228 (9th
13 Cir. 2000) (“[G]overnment officials violate [the First Amendment] when their acts would chill
14 or silence a person of ordinary firmness . . .”).

15 **2. The Subpoenas Are Not Justified By Any Important Government Interest.**

16 Nor can the subpoenas be justified under the case law concerning generally applicable
17 disclosure requirements. In the first place, as just described, these subpoenas impose generally
18 applicable obligations. They are selectively targeted at two companies. But in any event, they
19 also fail the “exacting scrutiny” courts apply to generally applicable disclosure requirements.
20 *Citizens United*, 558 U.S. at 366-67. First, the requirement must serve a “sufficiently important
21 government interest,” *id.*, that “reflect[s] the seriousness of the actual burden on First
22 Amendment rights.” *Davis*, 554 U.S. at 744 (emphasis added); *John Doe #1 v. Reed*, 561 U.S.
23 186, 196 (2010). Second, that interest must have a “substantial relation” to the disclosure
24 requirement. *Citizens United*, 558 U.S. at 366-67. The subpoenas cannot survive such scrutiny.

25 The subpoenas are not justified by any important governmental interest. As an initial
26 matter, the subpoenas cannot be justified by the Commission’s interests in protecting ratepayers
27 because, as discussed above, they are massively overbroad with respect to that interest. *See Ariz.*
28 *Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1010-11 (9th Cir. 2003)

1 (invalidating statute burdening political speech where fit between statute and purported purpose
2 “is poor at best”); *Am. Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 1000 (9th Cir.
3 2004) (invalidating law requiring certain groups to reveal names of financial sponsors as
4 overbroad). Requiring the Companies to produce information irrelevant to customer rates bears
5 no “substantial relation” to the Commission’s interest in regulating rates. *Citizens United*, 558
6 U.S. at 366-67.

7 Nor can the subpoenas be justified in order to prevent the “overparticipati[on]” of utilities
8 in the electoral process, as Commissioner Burns’ has described his goal. *See* Complaint ¶ 22 &
9 Ex. 7. “[I]t is our law and our tradition that more speech, not less, is the governing rule.” *Citizens*
10 *United*, 558 U.S. at 361. The Constitution “entrust[s] the people to judge what is true and what
11 is false.” *Id.* at 354-55. Commissioner Burns may disagree, but that is the law.

12 At times, Commissioner Burns has also suggested that compelled disclosure will prevent
13 the appearance of corruption. To be clear, Commissioner Burns does not allege any actual quid
14 pro quo corruption. Instead, he claims to prevent an appearance of undue influence that might
15 arise in the future. *See* Complaint Ex. 9 at 20 (“I’m not telling anybody that you’re unduly
16 influenced. I’m concerned about the future of who comes to run for the Corporation Commission
17 and how they are perceiving these large sums of money being pumped into these campaigns.”).

18 However, the U.S. Supreme Court held that independent spending poses no risk of “quid
19 pro quo corruption.” *Citizens United*, 558 U.S. at 359. The Court made crystal clear that
20 “independent expenditures, including those made by corporations, *do not give rise to corruption*
21 *or the appearance of corruption.*” *Id.* at 357 (emphasis added). In fact, “there is only scant
22 evidence that independent expenditures even ingratiate.... Ingratiation and access, in any event,
23 are not corruption.” *Id.* at 360. The Court explained that “[t]he absence of prearrangement and
24 coordination ... with the candidate or his agent ... alleviates the danger that expenditures will be
25 given as a *quid pro quo* for improper commitments from the candidate.” *Id.* at 357. The Court
26 further explained that such expenditures are nothing more than “political speech presented to the
27 electorate” in attempt to “persuade voters.” *Id.* at 360. The Supreme Court’s holding applies
28 with even greater force to anonymous contributions received by independent 501(c)(4) social

1 welfare organizations, which then decide how to use the funds they receive in support of those
2 organizations' own advocacy goals and agendas. Such contributions are two steps removed from
3 any candidate and, under the Supreme Court's reasoning, pose no risk of corruption.

4 **C. Commissioner Burns Lacks the Authority to Issue the Subpoenas.**

5 Commissioner Burns lacks authority to issue the subpoenas. *First*, a subpoena aimed at
6 the disclosure of political expenditures is not "within [the Commission's] scope of authority."
7 *Carrington*, 199 Ariz. At 305 ¶ 9; *see also People ex rel. Babbitt v. Herndon*, 119 Ariz. 454, 456
8 (1978) ("[A] party may resist an administrative subpoena on any appropriate grounds[,] . . .
9 includ[ing] that the inquiry is not within the agency's scope of authority."). The Commission
10 has no legitimate regulatory interest in a public service corporation's charitable and political
11 contributions and lobbying expenses, so long as it is not seeking to treat those expenditures as
12 recoverable operating expenses. And the Commission has no legitimate interest at all in such
13 expenses by an unregulated corporation, such as Pinnacle West. Indeed, Commissioner Burns
14 himself acknowledged that the "laws governing campaign finance are not within the
15 Commission's purview." Complaint ¶ 9 & Ex. 2.

16 The Arizona Constitution delegated campaign finance regulations to the legislature, not
17 to the Corporation Commission. *See* Ariz. Const. art. 7, § 16.⁶ Regulation of campaign finance
18 is governed by the "comprehensive statutory scheme" set forth in A.R.S. §§ 16-901 to 16-961,
19 *Pacion v. Thomas*, 225 Ariz. 168, 169 ¶ 6 (2010), and is administered by the Secretary of State
20 and the Citizens Clean Elections Commission. Violations are punished by the Citizens Clean
21 Elections Commission, Attorney General or county, city, or town attorney. A.R.S. §§ 16-924;
22 956(A)(7). The Commission has no authority to enforce the campaign finance statutes.

23 Under Arizona law, corporations need not disclose contributions to groups that may make
24 independent political expenditures. And groups that make independent expenditures are only
25 required to disclose their donors if the groups qualify as "political committees" under Arizona
26 law. A.R.S. §§ 16-913, 16-914.02(K), 16-915. Commissioner Burns, like any citizen, is free to
27 advocate for a change in the law; but he may not use the subpoena power to override policy

28 ⁶ The People also have lawmaking power through citizens' initiatives and referenda. Ariz. Const. IV, pt. 1, § 1.

1 decisions that the Constitution assigns to the legislative branch. To hold otherwise would violate
2 the Constitution's separation of powers. *State ex rel. Montgomery v. Mathis*, 231 Ariz. 103, 121
3 ¶ 66 (App. 2012) ("A violation of the separation of powers doctrine occurs when one branch of
4 government usurps another branch's powers or prevents that other branch from exercising its
5 authority."); *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17 (1966) (the
6 "Corporation Commission's powers do not exceed those to be derived from a strict construction
7 of the Constitution and implementing statutes."); *Tonto Creek Estates Homeowners Ass'n v. Ariz.*
8 *Corp. Comm'n*, 177 Ariz. 49, 55-57 (App. 1993).

9 *Second*, Commissioner Burns lacks the authority to subpoena documents in the absence
10 of any allegation of wrongdoing and disconnected from any Commission-authorized
11 investigation. With respect to APS documents, Commissioner Burns claims authority under
12 A.R.S. 40-241. (That provision applies solely to public service corporations and not to their
13 parents or affiliates.) But A.R.S. 40-241 cannot be read in isolation. It describes the power to
14 "inspect" records (not demand written responses) in the context of a proceeding that the
15 Commission as a whole has authorized under A.R.S. 40-102(C), which states, "Any
16 investigation, inquiry or hearing may be undertaken or held by or before any commissioner
17 *designated by the commission for the purpose.*" (emphasis added). Regarding Pinnacle West
18 documents, Commissioner Burns has cited Article 15 Section 4 of the Arizona Constitution, but
19 that provision likewise does not support him. In *Arizona Corp. Comm'n v. State ex rel. Woods*,
20 171 Ariz. 286 (1992), the Supreme Court considered at length whether the Commission had
21 authority to imposing reporting requirements on the affiliates of public service corporations, and
22 concluded that it did pursuant to its powers under Article 15 Section 3 of the Arizona
23 Constitution, but only insofar as the requirements are "reasonably connected to and necessary for
24 its ... ratemaking power." *Id.* at 294-95. These reporting rules are codified in Ariz. Admin. Code
25 R14-2-801 to -806, and they do not require disclosure of the information sought by
26 Commissioner Burns. It would have been nonsensical for the Supreme Court to engage in an
27 extended analysis of the Commission's limited powers over affiliates under Article 15 Section 3,
28 if the Commission could have simply bypassed those limitations by invoking Article 15 Section

1 4. The implications of Commissioner Burns' position are sweeping: any single Commissioner
2 could decide to mandate the public disclosure of any information, by any corporation doing
3 business in Arizona, for any reason—even when opposed by the remainder of the Commission.
4 The Court should reject such a notion.

5 **D. Compelling Testimony by the Companies' CEO Is Wholly Improper.**

6 Commissioner Burns' subpoenas compound their overbroad requests for written
7 information with a demand to depose the Companies' CEO. That demand is improper not only
8 for the reasons already discussed, but also because the law protects witnesses from undue burden
9 and "annoyance, embarrassment, [or] oppression." Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P.
10 26(c)(1); *Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 513 ¶ 21 (App. 2009) (requiring less
11 intrusive means of discovery to avoid harassment). Accordingly, courts have held that
12 depositions of high-ranking company officials are unduly burdensome and unwarranted. *See*,
13 *e.g.*, *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991) (the "legal authority is
14 fairly unequivocal" that sharp limits are placed on depositions of high-ranking officials). Efforts
15 to depose high-level executives "create[] a tremendous potential for abuse or harassment." *Apple*
16 *Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). A party cannot compel
17 testimony from a highly placed executive unless it can show that the executive has "knowledge
18 that is both unique and relevant." *Guan Ming Lin v. Benihana Nat'l Corp.*, No. 10 CIV. 1335,
19 2010 WL 4007282, at *2 (S.D.N.Y. Oct. 5, 2010) (prohibiting deposition of high-ranking
20 executive who had "no special personal knowledge" when others could testify to same topics).

21 Here, Mr. Brandt does not have unique or special knowledge regarding the subpoena's
22 purported purpose. Instead, Commissioner Burns seeks the public spectacle of calling the CEO
23 to the carpet the week before early voting begins. If *any* deposition is allowed, it should be of a
24 lower-level person with relevant knowledge of how APS accounted for its expenses during the
25 2010 and 2015 test years. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (affirming
26 order prohibiting executive deposition until lower-level employees deposed); *Am. Family Mut.*
27 *Ins Co.*, 222 Ariz. at 513 ¶ 21 (prohibiting potentially harassing discovery until "litigants . . . at
28 least initially pursue less intrusive discovery").

1 **E. Commissioner Burns's Threat to Publicly Disseminate the Information**
2 **Gathered by the Subpoenas Underscores Its Improper Purpose.**

3 Commissioner Burns has declared his intention to make publicly available all the
4 information and testimony he gathers. That flagrantly violates statutory protections of
5 confidential business information. *See* A.R.S. § 40-204(C) ("No information furnished to the
6 commission by a public service corporation, except matters specifically required to be open to
7 public inspection, shall be open to public inspection or made public"). To be made public, there
8 must be due process: an "order of the commission entered after notice" or an order entered "in
9 the course of a hearing or proceeding." *Id.* There is no basis for Commissioner Burns to
10 unilaterally make confidential information public, and the threat merely underscores the
11 subpoena's improper purpose.

12 **II. AN INJUNCTION IS NEEDED TO PREVENT IRREPARABLE HARM.**

13 Irreparable harm exists where "damages are inadequate to address the full harm suffered."
14 *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 65 ¶ 11 (App.
15 2011). The U.S. Supreme Court has long recognized that the "loss of First Amendment freedoms,
16 for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*,
17 427 U.S. 347, 373 (1976). Here, no amount of damages could remedy the forced public
18 disclosure of material protected by the First Amendment.

19 *First*, once the information is revealed, it can never again be protected. A court cannot
20 "unring the bell" once the information has been released." *Maness v. Meyers*, 419 U.S. 449, 460
21 (1975); *Mobilisa, Inc. v. Doe*, 217 Ariz. 103, 112 ¶ 26 (App. 2007) ("[A]n unmasked anonymous
22 speaker cannot later obtain relief" if the other party fails to prevail on the merits). "Given this
23 significant consequence, it is even more appropriate to require the court to balance the parties'
24 competing interests before permitting discovery on the identity issue." *Mobilisa*, 217 Ariz. at
25 112 ¶ 26.

26 *Second*, forced disclosure creates a risk of retribution. The Supreme Court has recognized
27 that such disclosure can "subject [the speaker] to threats, harassment, or reprisals from ...
28 Government officials." *Citizens United*, 558 U.S. at 367. That risk is more than theoretical here:

1 Commissioner Burns already launched a “broadened” investigation into the Companies’ past
2 speech when APS refused to refrain from speech in the upcoming election, and he has described
3 his vote as a “tool” that he will use to punish APS. Complaint ¶¶ 17, 19 , Exs. 6,7.

4 Further heightening the irreparable harm of disclosure is Commissioner Burns’ stated
5 intent to publicly release any information received. “It would be difficult—if not impossible—
6 to reverse the harm from those broadcasts” of the Companies’ protected information.
7 *Hollingsworth v. Perry*, 558 U.S. 183, 195 (2010). That is true not only of First Amendment-
8 protected materials, but also of the Companies’ confidential business information that
9 Commissioner Burns threatens to release publicly.

10 **III. THE BALANCE OF HARMS AND PUBLIC INTEREST FAVOR AN** 11 **INJUNCTION.**

12 The balance of harms strongly favors an injunction. In contrast to the Companies,
13 Commissioner Burns will suffer no harm from an injunction: he already has access to the
14 materials APS submitted or will submit in connection with rates set based on 2010 and 2015 test
15 years. Moreover, Commissioner Burns initiated this investigation more than nine months ago.
16 There is no urgent and sudden need for the subpoenas.

17 The public interest likewise favors an injunction. As described above, Arizona has not
18 generally required disclosure of donors to 501(c)(4) public welfare organizations because of the
19 public interest in protecting the First Amendment freedom of association. As the State of Arizona
20 recently told the U.S. Supreme Court, “the First Amendment harm *is inherent* in the disclosure
21 [of donations] to the government official” because it encourages such “government officials ...
22 to single out their political opponent for retribution.” Br. of Arizona et al. as Amicus Curiae in
23 Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 2,
24 2015). And the Commission as a whole has refused to endorse Commissioner Burns’ “battle
25 with APS.” Complaint ¶¶ 20, 25, & Ex. 8. The public interest weighs on the side of protecting
26 First Amendment rights.


27 **CONCLUSION**

28 An Order to Show Cause should be issued and a preliminary injunction granted.

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DATED this 9th day of September, 2016.

OSBORN MALEDON, P.A.

By /s/ 
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EXHIBIT D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number	Registrant, State of Incorporation, Address, and Telephone Number	IRS Employer Identification No.
1-8962	PINNACLE WEST CAPITAL CORPORATION (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000	86-0512431
1-4473	ARIZONA PUBLIC SERVICE COMPANY (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000	86-0011170

Securities registered pursuant to Section 12(b) of the Act:

	Title Of Each Class	Name Of Each Exchange On Which Registered
PINNACLE WEST CAPITAL CORPORATION	Common Stock, No Par Value	New York Stock Exchange
ARIZONA PUBLIC SERVICE COMPANY	None	None

Securities registered pursuant to Section 12(g) of the Act:
 ARIZONA PUBLIC SERVICE COMPANY Common Stock, Par Value \$2.50 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act

PINNACLE WEST CAPITAL CORPORATION Yes ☒ No ☐
 ARIZONA PUBLIC SERVICE COMPANY Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

PINNACLE WEST CAPITAL CORPORATION Yes ☐ No ☒
 ARIZONA PUBLIC SERVICE COMPANY Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days

PINNACLE WEST CAPITAL CORPORATION Yes ☒ No ☐
 ARIZONA PUBLIC SERVICE COMPANY Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files)

PINNACLE WEST CAPITAL CORPORATION Yes ☒ No ☐
 ARIZONA PUBLIC SERVICE COMPANY Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or in any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one)

PINNACLE WEST CAPITAL CORPORATION
 Large accelerated filer ☒ Accelerated filer ☐
 Non-accelerated filer ☐ Smaller reporting company ☐
 (Do not check if a smaller reporting company)

ARIZONA PUBLIC SERVICE COMPANY
 Large accelerated filer ☐ Accelerated filer ☐
 Non-accelerated filer ☒ Smaller reporting company ☐
 (Do not check if a smaller reporting company)

Indicate by check mark whether each registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates, computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of each registrant's most recently completed second fiscal quarter

PINNACLE WEST CAPITAL CORPORATION
ARIZONA PUBLIC SERVICE COMPANY

\$8,961,361,256 as of June 30, 2016
\$6 as of June 30, 2015

The number of shares outstanding of each registrant's common stock as of February 17, 2017

PINNACLE WEST CAPITAL CORPORATION
ARIZONA PUBLIC SERVICE COMPANY

111,340,169 shares
Common Stock, \$2.50 par value, 71,264,947 shares. Pinnacle West Capital Corporation is the sole holder of Arizona Public Service Company's Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Pinnacle West Capital Corporation's definitive Proxy Statement relating to its Annual Meeting of Shareholders to be held on May 17, 2017 are incorporated by reference into Part III hereof.

Arizona Public Service Company meets the conditions set forth in General Instruction I(1)(a) and (b) of Form 10-K and is therefore filing this form with the reduced disclosure format allowed under that General Instruction.

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This combined Form 10-K is separately filed by Pinnacle West and APS. Each registrant is filing on its own behalf all of the information contained in this Form 10-K that relates to such registrant and, where required, its subsidiaries. Except as stated in the preceding sentence, neither registrant is filing any information that does not relate to such registrant, and therefore makes no representation as to any such information. The information required with respect to each company is set forth within the applicable items. Item 8 of this report includes Consolidated Financial Statements of Pinnacle West and Consolidated Financial Statements of APS. Item 8 also includes Combined Notes to Consolidated Financial Statements.

GLOSSARY OF NAMES AND TECHNICAL TERMS

4CA	4C Acquisition, LLC, a wholly-owned subsidiary of Pinnacle West
ac	Alternating Current
ACC	Arizona Corporation Commission
ADEQ	Arizona Department of Environmental Quality
AFUDC	Allowance for Funds Used During Construction
ANPP	Arizona Nuclear Power Project, also known as Palo Verde
APS	Arizona Public Service Company, a subsidiary of the Company
ARO	Asset retirement obligations
ASU	Accounting Standards Update
BART	Best available retrofit technology
Base Fuel Rate	The portion of APS's retail base rates attributable to fuel and purchased power costs
BCE	Bright Canyon Energy Corporation, a subsidiary of the Company
BHP Billiton	BHP Billiton New Mexico Coal, Inc.
BNCC	BHP Navajo Coal Company
CAISO	California Independent System Operator
CCR	Coal combustion residuals
Cholla	Cholla Power Plant
dc	Direct Current
distributed energy systems	Small-scale renewable energy technologies that are located on customers' properties, such as rooftop solar systems
DOE	United States Department of Energy
DOI	United States Department of the Interior
DOJ	United States Department of Justice
DSM	Demand side management
DSMAC	Demand side management adjustment charge
EES	Energy Efficiency Standard
El Dorado	El Dorado Investment Company, a subsidiary of the Company
El Paso	El Paso Electric Company
EPA	United States Environmental Protection Agency
FERC	United States Federal Energy Regulatory Commission
Four Corners	Four Corners Power Plant
GWh	Gigawatt-hour, one billion watts per hour
kV	Kilovolt, one thousand volts
kWh	Kilowatt-hour, one thousand watts per hour
LFMR	Lost Fixed Cost Recovery Mechanism
MMBtu	One million British Thermal Units
MW	Megawatt, one million watts
MWh	Megawatt-hour, one million watts per hour
Native Load	Retail and wholesale sales supplied under traditional cost-based rate regulation
Navajo Plant	Navajo Generating Station
NERC	North American Electric Reliability Corporation
NRC	United States Nuclear Regulatory Commission
NTEC	Navajo Transitional Energy Company, LLC
OCI	Other comprehensive income
OSM	Office of Surface Mining Reclamation and Enforcement
Palo Verde	Palo Verde Nuclear Generating Station or PVNGS
Pinnacle West	Pinnacle West Capital Corporation (any use of the words "Company," "we," and "our" refer to Pinnacle West)
PSA	Power supply adjuster approved by the ACC to provide for recovery or refund of variations in actual fuel and purchased power costs compared with the Base Fuel Rate
RES	Arizona Renewable Energy Standard and Tariff
Salt River Project or SRP	Salt River Project Agricultural Improvement and Power District
SCE	Southern California Edison Company
TCA	Transmission cost adjuster
VIE	Variable interest entity

FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements based on current expectations. These forward-looking statements are often identified by words such as “estimate,” “predict,” “may,” “believe,” “plan,” “expect,” “require,” “intend,” “assume,” “project” and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. In addition to the Risk Factors described in Item 1A and in Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” these factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental, economic and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;
- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and ACC orders.

These and other factors are discussed in the Risk Factors described in Item 1A of this report, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

PART I

ITEM 1. BUSINESS

Pinnacle West

Pinnacle West is a holding company that conducts business through its subsidiaries. We derive essentially all of our revenues and earnings from our wholly-owned subsidiary, APS. APS is a vertically-integrated electric utility that provides either retail or wholesale electric service to most of the State of Arizona, with the major exceptions of about one-half of the Phoenix metropolitan area, the Tucson metropolitan area and Mohave County in northwestern Arizona.

Pinnacle West's other subsidiaries are El Dorado, BCE and 4CA. Additional information related to these subsidiaries is provided later in this report.

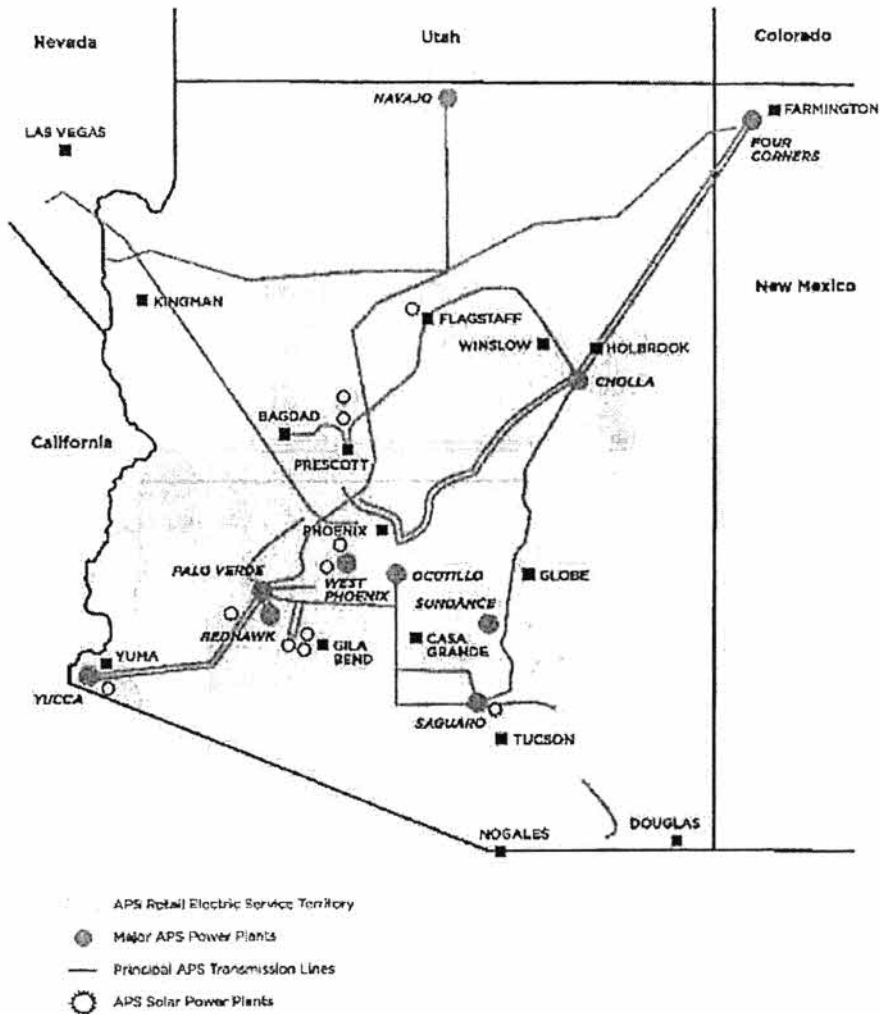
Our reportable business segment is our regulated electricity segment, which consists of traditional regulated retail and wholesale electricity businesses (primarily electric service to Native Load customers) and related activities, and includes electricity generation, transmission and distribution.

BUSINESS OF ARIZONA PUBLIC SERVICE COMPANY

APS currently provides electric service to approximately 1.2 million customers. We own or lease 6,236 MW of regulated generation capacity and we hold a mix of both long-term and short-term purchased power agreements for additional capacity, including a variety of agreements for the purchase of renewable energy. During 2016, no single purchaser or user of energy accounted for more than 1.1% of our electric revenues.

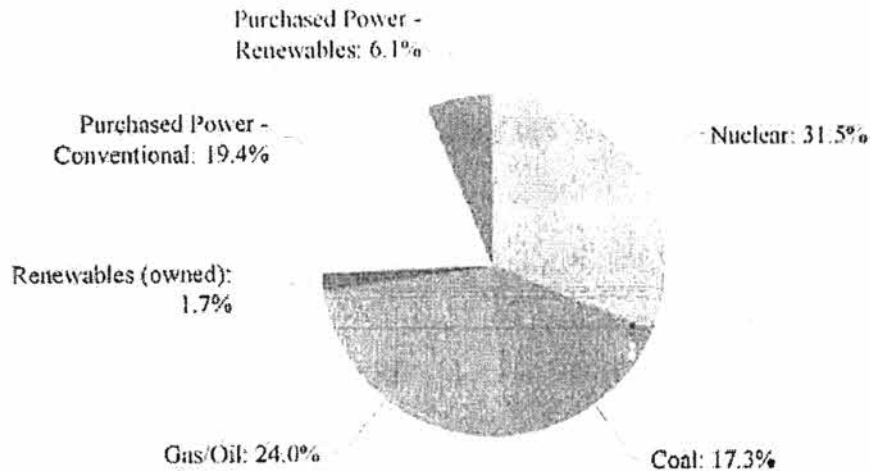
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The following map shows APS's retail service territory, including the locations of its generating facilities and principal transmission lines.



Energy Sources and Resource Planning

To serve its customers, APS obtains power through its various generation stations and through purchased power agreements. Resource planning is an important function necessary to meet Arizona's future energy needs. APS's sources of energy by type used to supply energy to Native Load customers during 2016 were as follows:



Generation Facilities

APS has ownership interests in or leases the coal, nuclear, gas, oil and solar generating facilities described below. For additional information regarding these facilities, see Item 2.

Coal-Fueled Generating Facilities

Four Corners — Four Corners is located in the northwestern corner of New Mexico, and was originally a 5-unit coal-fired power plant. APS owns 100% of Units 1, 2 and 3, which were retired as of December 30, 2013. APS operates the plant and owns 63% of Four Corners Units 4 and 5 following the acquisition of SCE's interest in Units 4 and 5 described below. APS has a total entitlement from Four Corners of 970 MW. Additionally, 4CA, a wholly-owned subsidiary of Pinnacle West, owns 7% of Units 4 and 5 following its acquisition of El Paso's interest in these units described below.

On December 30, 2013, APS purchased SCE's 48% interest in each of Units 4 and 5 of Four Corners. The final purchase price for the interest was approximately \$182 million. In connection with APS's prior retail

rate case with the ACC, the ACC reserved the right to review the prudence of the Four Corners transaction for cost recovery purposes upon the closing of the transaction. On December 23, 2014, the ACC approved rate adjustments related to APS's acquisition of SCE's interest in Four Corners resulting in a revenue increase of \$57.1 million on an annual basis. On February 23, 2015, the ACC decision approving the rate adjustments was appealed. APS has intervened and is actively participating in the proceeding. The Arizona Court of Appeals suspended the appeal pending the Arizona Supreme Court's decision in the System Improvement Benefits ("SIB") matter discussed in Note 3. On August 8, 2016, the Arizona Supreme Court issued its opinion in the SIB matter, and the Arizona Court of Appeals has now ordered supplemental briefing on how that SIB decision should affect the challenge to the Four Corners rate adjustment. We cannot predict when or how this matter will be resolved.

Concurrently with the closing of the SCE transaction, BHP Billiton, the parent company of BNCC, the coal supplier and operator of the mine that serves Four Corners, transferred its ownership of BNCC to NTEC, a company formed by the Navajo Nation to own the mine and develop other energy projects. BHP Billiton was retained by NTEC under contract as the mine manager and operator through 2016. Also occurring concurrently with the closing, the Four Corners' co-owners executed a long-term agreement for the supply of coal to Four Corners from July 2016 through 2031 (the "2016 Coal Supply Agreement"). El Paso, a 7% owner in Units 4 and 5 of Four Corners, did not sign the 2016 Coal Supply Agreement. Under the 2016 Coal Supply Agreement, APS agreed to assume the 7% shortfall obligation. On February 17, 2015, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in each of Units 4 and 5 of Four Corners. 4CA purchased the El Paso interest on July 6, 2016. The purchase price was immaterial in amount, and 4CA assumed El Paso's reclamation and decommissioning obligations associated with the 7% interest.

NTEC has the option to purchase the 7% interest within a certain timeframe pursuant to an option granted to NTEC. On December 29, 2015, NTEC provided notice of its intent to exercise the option. The 2016 Coal Supply Agreement contains alternate pricing terms for the 7% shortfall obligations in the event NTEC does not purchase the interest.

APS, on behalf of the Four Corners participants, negotiated amendments to an existing facility lease with the Navajo Nation, which extends the Four Corners leasehold interest from 2016 to 2041. The Navajo Nation approved these amendments in March 2011. The effectiveness of the amendments also required the approval of the DOI, as did a related federal rights-of-way grant. A federal environmental review was undertaken as part of the DOI review process, and culminated in the issuance by DOI of a record of decision on July 17, 2015 justifying the agency action extending the life of the plant and the adjacent mine.

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the Endangered Species Act ("ESA") and the National Environmental Policy Act ("NEPA") in providing the federal approvals necessary to extend operations at Four Corners and the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Cholla — Cholla was originally a 4-unit coal-fired power plant, which is located in northeastern Arizona. APS operates the plant and owns 100% of Cholla Units 1, 2 and 3. PacifiCorp owns Cholla Unit 4,

and APS operates that unit for PacifiCorp. On September 11, 2014, APS announced that it would close its 260 MW Unit 2 at Cholla and cease burning coal at Units 1 and 3 by the mid-2020s if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. (See Note 3 for details related to the resulting regulatory asset and Note 10 for details of the proposal.) APS believes that the environmental benefits of this proposal are greater in the long-term than the benefits that would have resulted from adding the emissions control equipment. APS closed Unit 2 on October 1, 2015. Following the closure of Unit 2, APS has a total entitlement from Cholla of 387 MW.

On January 13, 2017, EPA approved a final rule incorporating APS's compromise approach. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

APS purchases all of Cholla's coal requirements from a coal supplier, an affiliate of Peabody Energy Corporation, that mines all of the coal under long-term leases of coal reserves with the federal and state governments and private landholders. On April 13, 2016, Peabody Energy Corporation and certain affiliated entities filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri. Under the Coal Supply Agreement, dated December 21, 2005, Peabody supplied coal to APS and PacifiCorp (collectively, the "Buyers") for use at Cholla. APS believes that the Coal Supply Agreement terminated automatically on April 13, 2016 as a result of Peabody's bankruptcy filing. The Buyers filed a motion requesting that the Bankruptcy Court enter an order determining that the Buyers are authorized to enforce the termination provisions in the Coal Supply Agreement.

On May 13, 2016, Peabody filed a complaint against the Buyers in the bankruptcy court in which Peabody alleged that the Buyers breached the Coal Supply Agreement. On January 27, 2017, the bankruptcy court approved a settlement between the parties, and on February 6, 2017 the parties executed an amendment to the Coal Supply Agreement that allows for continuation of the agreement with modified terms and conditions acceptable to the parties.

APS has a long-term coal transportation by rail contract that expires in 2017.

Navajo Generating Station — The Navajo Plant is a 3-unit coal-fired power plant located in northern Arizona. Salt River Project operates the plant and APS owns a 14% interest in Navajo Units 1, 2 and 3. APS has a total entitlement from the Navajo Plant of 315 MW. The Navajo Plant's coal requirements are purchased from a supplier with long-term leases from the Navajo Nation and the Hopi Tribe. The Navajo Plant is under contract with its coal supplier through 2019, with extension rights through 2026. The Navajo Plant site is leased from the Navajo Nation and is also subject to an easement from the federal government. The current lease expires in 2019.

On February 13, 2017, the co-owners of the Navajo Plant voted not to pursue continued operation of the plant beyond December 2019, the expiration of the current lease term, and to pursue a new lease or lease extension with the Navajo Nation that would allow decommissioning activities to begin after December 2019 instead of later this year. Various stakeholders including regulators, tribal representatives and others interested in the continued operation of the plant intend to meet to determine if an alternate solution can be reached that would permit continued operation of the plant beyond 2019. We cannot predict whether any alternate solutions will be found that would be acceptable to all of the stakeholders and feasible to implement. APS is currently

recovering depreciation and a return on the net book value of its interest in the Navajo Plant. APS will seek continued recovery in rates for the book value of its remaining investment in the plant (\$108 million as of December 31, 2016) plus a return on the net book value as well as other costs related to retirement and closure, which are still being assessed and which may be material. We cannot predict whether APS would obtain such recovery.

On February 14, 2017, the ACC opened a docket titled "ACC Investigation Concerning the Future of the Navajo Generating Station" with the stated goal of engaging stakeholders and negotiating a sustainable pathway for the Navajo Plant to continue operating in some form after December 2019. APS cannot predict the outcome of this proceeding.

These coal-fueled plants face uncertainties, including those related to existing and potential legislation and regulation, that could significantly impact their economics and operations. See "Environmental Matters" below and "Management's Discussion and Analysis of Financial Condition and Results of Operations — Overview and Capital Expenditures" in Item 7 for developments impacting these coal-fueled facilities. See Note 10 for information regarding APS's coal mine reclamation obligations.

Nuclear

Palo Verde Nuclear Generating Station — Palo Verde is a 3-unit nuclear power plant located approximately 50 miles west of Phoenix, Arizona. APS operates the plant and owns 29.1% of Palo Verde Units 1 and 3 and approximately 17% of Unit 2. In addition, APS leases approximately 12.1% of Unit 2, resulting in a 29.1% combined ownership and leasehold interest in that unit. APS has a total entitlement from Palo Verde of 1,146 MW.

Palo Verde Leases — In 1986, APS entered into agreements with three separate lessor trust entities in order to sell and lease back approximately 42% of its share of Palo Verde Unit 2 and certain common facilities. The leaseback was originally scheduled to expire at the end of 2015 and contained options to renew the leases or to purchase the leased property for fair market value at the end of the lease terms. On July 7, 2014, APS exercised the fixed rate lease renewal options. The exercise of the renewal options resulted in APS retaining the assets through 2023 under one lease and 2033 under the other two leases. At the end of the lease renewal periods, APS will have the option to purchase the leased assets at their fair market value, extend the leases for up to two years, or return the assets to the lessors. See Note 18 for additional information regarding the Palo Verde Unit 2 sale leaseback transactions.

Palo Verde Operating Licenses — Operation of each of the three Palo Verde Units requires an operating license from the NRC. The NRC issued full power operating licenses for Unit 1 in June 1985, Unit 2 in April 1986 and Unit 3 in November 1987, and issued renewed operating licenses for each of the three units in April 2011, which extended the licenses for Units 1, 2 and 3 to June 2045, April 2046 and November 2047, respectively.

Palo Verde Fuel Cycle — The Palo Verde participants are continually identifying their future nuclear fuel resource needs and negotiating arrangements to fill those needs. The fuel cycle for Palo Verde is comprised of the following stages:

- mining and milling of uranium ore to produce uranium concentrates;
- conversion of uranium concentrates to uranium hexafluoride;
- enrichment of uranium hexafluoride;
- fabrication of fuel assemblies;
- utilization of fuel assemblies in reactors; and
- storage and disposal of spent nuclear fuel.

The Palo Verde participants have contracted for 100% of Palo Verde's requirements for uranium concentrates and conversion services through 2018 and 45% of its requirements in 2019-2025. The participants have also contracted for 100% of Palo Verde's enrichment services through 2020 and 20% of its enrichment services for 2021-2026; and all of Palo Verde's fuel assembly fabrication services through 2024.

Spent Nuclear Fuel and Waste Disposal — The Nuclear Waste Policy Act of 1982 ("NWPA") required the DOE to accept, transport, and dispose of spent nuclear fuel and high level waste generated by the nation's nuclear power plants by 1998. The DOE's obligations are reflected in a contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (the "Standard Contract") with each nuclear power plant. The DOE failed to begin accepting spent nuclear fuel by 1998. APS is directly and indirectly involved in several legal proceedings related to DOE's failure to meet its statutory and contractual obligations regarding acceptance of spent nuclear fuel and high level waste.

APS Lawsuit for Breach of Standard Contract — In December 2003, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a lawsuit against DOE in the United States Court of Federal Claims ("Court of Federal Claims") for damages incurred due to DOE's breach of the Standard Contract. The Court of Federal Claims ruled in favor of APS and the Palo Verde participants in October 2010 and awarded \$30.2 million in damages to APS and the Palo Verde participants for costs incurred through December 2006.

On December 19, 2012, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a second breach of contract lawsuit against the DOE in the Court of Federal Claims. This lawsuit sought to recover damages incurred due to DOE's breach of the Standard Contract for failing to accept Palo Verde's spent nuclear fuel and high level waste from January 1, 2007 through June 30, 2011, as it was required to do pursuant to the terms of the Standard Contract and the Nuclear Waste Policy Act. On August 18, 2014, APS and DOE entered into a settlement agreement, stipulating to a dismissal of the lawsuit and payment of \$57.4 million by DOE to the Palo Verde owners for certain specified costs incurred by Palo Verde during the period January 1, 2007 through June 30, 2011. APS's share of this amount is \$16.7 million. Amounts recovered in the lawsuit and settlement were recorded as adjustments to a regulatory liability and had no impact on the amount of reported net income. In addition, the settlement agreement provides APS with a method for submitting claims and getting recovery for costs incurred through December 31, 2016, which has been extended to December 31, 2019.

APS has submitted two claims pursuant to the terms of the August 18, 2014 settlement agreement, for two separate time periods during July 1, 2011 through June 30, 2015. The DOE has approved and paid \$53.9 million for these claims (APS's share is \$15.7 million). The amounts recovered were primarily recorded as adjustments to a regulatory liability and had no impact on reported net income. APS's next claim pursuant to the terms of the August 18, 2014 settlement agreement was submitted to the DOE on October 31, 2016, and approved on February 1, 2017, in the amount \$11.3 million (APS's share is \$3.3 million). Payment for the claim is expected in the second quarter of 2017.

The One-Mill Fee — In 2011, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute challenged DOE's 2010 determination of the adequacy of the one tenth of a cent per kWh fee (the "one-mill fee") paid by the nation's commercial nuclear power plant owners pursuant to their individual obligations under the Standard Contract. This fee is recovered by APS in its retail rates. In June 2012, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") held that DOE failed to conduct a sufficient fee analysis in making the 2010 determination. The D.C. Circuit remanded the 2010 determination to the Secretary of the DOE ("Secretary") with instructions to conduct a new fee adequacy determination within six months. In February 2013, upon completion of DOE's revised one-mill fee adequacy determination, the D.C. Circuit reopened the proceedings. On November 19, 2013, the D.C. Circuit found that the DOE did not conduct a legally adequate fee assessment and ordered the Secretary to notify Congress of his

intent to suspend collecting annual fees for nuclear waste disposal from nuclear power plant operators, as he is required to do pursuant to the NWPA and the D.C. Circuit's order. On January 3, 2014, the Secretary notified Congress of his intention to suspend collection of the one-mill fee, subject to Congress' disapproval. On May 16, 2014, the DOE notified all commercial nuclear power plant operators who are party to a Standard Contract that it reduced the one-mill fee to zero, thus effectively terminating the one-mill fee.

DOE's Construction Authorization Application for Yucca Mountain — The DOE had planned to meet its NWPA and Standard Contract disposal obligations by designing, licensing, constructing, and operating a permanent geologic repository at Yucca Mountain, Nevada. In June 2008, the DOE submitted its Yucca Mountain construction authorization application to the NRC, but in March 2010, the DOE filed a motion to dismiss with prejudice the Yucca Mountain construction authorization application. Several interested parties have also intervened in the NRC proceeding. Additionally, a number of interested parties filed a variety of lawsuits in different jurisdictions around the country challenging the DOE's authority to withdraw the Yucca Mountain construction authorization application and NRC's cessation of its review of the Yucca Mountain construction authorization application. The cases have been consolidated into one matter at the D.C. Circuit. In August 2013, the D.C. Circuit ordered the NRC to resume its review of the application with available appropriated funds.

On October 16, 2014, the NRC issued Volume 3 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume addresses repository safety after permanent closure, and its issuance is a key milestone in the Yucca Mountain licensing process. Volume 3 contains the staff's finding that the DOE's repository design meets the requirements that apply after the repository is permanently closed, including but not limited to the post-closure performance objectives in NRC's regulations.

On December 18, 2014, the NRC issued Volume 4 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume covers administrative and programmatic requirements for the repository. It documents the staff's evaluation of whether the DOE's research and development and performance confirmation programs, as well as other administrative controls and systems, meet applicable NRC requirements. Volume 4 contains the staff's finding that most administrative and programmatic requirements in NRC regulations are met, except for certain requirements relating to ownership of land and water rights.

Publication of Volumes 3 and 4 does not signal whether or when the NRC might authorize construction of the repository.

Waste Confidence and Continued Storage — On June 8, 2012, the D.C. Circuit issued its decision on a challenge by several states and environmental groups of the NRC's rulemaking regarding temporary storage and permanent disposal of high level nuclear waste and spent nuclear fuel. The petitioners had challenged the NRC's 2010 update to the agency's Waste Confidence Decision and temporary storage rule ("Waste Confidence Decision").

The D.C. Circuit found that the agency's 2010 Waste Confidence Decision update constituted a major federal action, which, consistent with NEPA, requires either an environmental impact statement or a finding of no significant impact from the agency's actions. The D.C. Circuit found that the NRC's evaluation of the environmental risks from spent nuclear fuel was deficient, and therefore remanded the 2010 Waste Confidence Decision update for further action consistent with NEPA.

On September 6, 2012, the NRC Commissioners issued a directive to the NRC staff to proceed directly with development of a generic environmental impact statement to support an updated Waste Confidence

Decision. The NRC Commissioners also directed the staff to establish a schedule to publish a final rule and environmental impact study within 24 months of September 6, 2012.

In September 2013, the NRC issued its draft Generic Environmental Impact Statement (“GEIS”) to support an updated Waste Confidence Decision. On August 26, 2014, the NRC approved a final rule on the environmental effects of continued storage of spent nuclear fuel. Renamed as the Continued Storage Rule, the NRC’s decision adopted the findings of the GEIS regarding the environmental impacts of storing spent fuel at any reactor site after the reactor’s licensed period of operations. As a result, those generic impacts do not need to be re-analyzed in the environmental reviews for individual licenses. Although Palo Verde had not been involved in any licensing actions affected by the D.C. Circuit’s June 8, 2012, decision, the NRC lifted its suspension on final licensing actions on all nuclear power plant licenses and renewals that went into effect when the D.C. Circuit issued its June 2012 decision. The final Continued Storage Rule was subject to continuing legal challenges before the NRC and the Court of Appeals. In June 2016, the D.C. Circuit issued its final decision, rejecting all remaining legal challenges to the Continued Storage Rule. On August 8, 2016, the D.C. Circuit denied a petition for rehearing.

Palo Verde has sufficient capacity at its on-site independent spent fuel storage installation (“ISFSI”) to store all of the nuclear fuel that will be irradiated during the initial operating license period, which ends in December 2027. Additionally, Palo Verde has sufficient capacity at its on-site ISFSI to store a portion of the fuel that will be irradiated during the period of extended operation, which ends in November 2047. If uncertainties regarding the United States government’s obligation to accept and store spent fuel are not favorably resolved, APS will evaluate alternative storage solutions that may obviate the need to expand the ISFSI to accommodate all of the fuel that will be irradiated during the period of extended operation.

Nuclear Decommissioning Costs — APS currently relies on an external sinking fund mechanism to meet the NRC financial assurance requirements for decommissioning its interests in Palo Verde Units 1, 2 and 3. The decommissioning costs of Palo Verde Units 1, 2 and 3 are currently included in APS’s ACC jurisdictional rates. Decommissioning costs are recoverable through a non-bypassable system benefits charge (paid by all retail customers taking service from the APS system). Based on current nuclear decommissioning trust asset balances, site specific decommissioning cost studies, anticipated future contributions to the decommissioning trusts, and return projections on the asset portfolios over the expected remaining operating life of the facility, we are on track to meet the current site specific decommissioning costs for Palo Verde at the time the units are expected to be decommissioned. See Note 19 for additional information about APS’s nuclear decommissioning trusts.

Palo Verde Liability and Insurance Matters — See “Palo Verde Nuclear Generating Station — Nuclear Insurance” in Note 10 for a discussion of the insurance maintained by the Palo Verde participants, including APS, for Palo Verde.

Natural Gas and Oil Fueled Generating Facilities

APS has six natural gas power plants located throughout Arizona, consisting of Redhawk, located near Palo Verde; Ocotillo, located in Tempe (discussed below); Sundance, located in Coolidge; West Phoenix, located in southwest Phoenix; Saguaro, located north of Tucson; and Yucca, located near Yuma. Several of the units at Yucca run on either gas or oil. APS has one oil-only power plant, Douglas, located in the town of Douglas, Arizona. APS owns and operates each of these plants with the exception of one oil-only combustion turbine unit and one oil and gas steam unit at Yucca that are operated by APS and owned by the Imperial Irrigation District. APS has a total entitlement from these plants of 3,179 MW. Gas for these plants is financially hedged up to three years in advance of purchasing and the gas is generally purchased one month prior to delivery. APS has long-term gas transportation agreements with three different companies, some of

which are effective through 2024. Fuel oil is acquired under short-term purchases delivered primarily to West Phoenix, where it is distributed to APS's other oil power plants by truck.

Ocotillo is a 330 MW 4-unit gas plant located in the metropolitan Phoenix area. In early 2014, APS announced a project to modernize the plant, which involves retiring two older 110 MW steam units, adding five 102 MW combustion turbines and maintaining two existing 55 MW combustion turbines. In total, this increases the capacity of the site by 290 MW, to 620 MW, with completion targeted by summer 2019. (See Note 3 for proposed rate recovery in our current retail rate case.) On September 9, 2016, Maricopa County issued a final permit decision that authorizes construction of the Ocotillo modernization project and construction will begin in early 2017.

Solar Facilities

APS developed utility scale solar resources through the 170 MW ACC-approved AZ Sun Program. APS invested approximately \$675 million in its AZ Sun Program. These facilities are owned by APS and are located in multiple locations throughout Arizona. In 2016, APS developed the 40MW Red Rock Solar Plant, which it owns and operates. Two of our large customers will purchase renewable energy credits from APS that is equivalent to the amount of renewable energy that Red Rock is projected to generate.

Additionally, APS owns and operates more than forty small solar systems around the state. Together they have the capacity to produce approximately 4 MW of renewable energy. This fleet of solar systems includes a 3 MW facility located at the Prescott Airport and 1 MW of small solar in various locations across Arizona. APS has also developed solar photovoltaic distributed energy systems installed as part of the Community Power Project in Flagstaff, Arizona. The Community Power Project, approved by the ACC on April 1, 2010, is a pilot program through which APS owns, operates and receives energy from approximately 1 MW of solar photovoltaic distributed energy systems located within a certain test area in Flagstaff, Arizona. Additionally, APS owns 12 MW of solar photovoltaic systems installed across Arizona through the ACC-approved Schools and Government Program.

In December 2014, the ACC voted that it had no objection to APS implementing an APS-owned rooftop solar research and development program aimed at learning how to efficiently enable the integration of rooftop solar and battery storage with the grid. The first stage of the program, called the "Solar Partner Program," placed 8 MW of residential rooftop solar on strategically selected distribution feeders in an effort to maximize potential system benefits, as well as made systems available to limited-income customers who could not easily install solar through transactions with third parties. The second stage of the program, which included an additional 2 MW of rooftop solar and energy storage, placed two energy storage systems sized at 2 MW on two different high solar penetration feeders to test various grid-related operation improvements and system interoperability, and was in operation by the end of 2016. The ACC expressly reserved that any determination of prudence of the residential rooftop solar program for rate making purposes would not be made until the project was fully in service, and APS has requested cost recovery for the project in its currently pending rate case. On September 30, 2016, APS presented its preliminary findings from the residential rooftop solar program in a filing with the ACC.

Purchased Power Contracts

In addition to its own available generating capacity, APS purchases electricity under various arrangements, including long-term contracts and purchases through short-term markets to supplement its owned or leased generation and hedge its energy requirements. A portion of APS's purchased power expense is netted against wholesale sales on the Consolidated Statements of Income. (See Note 16.) APS continually assesses its need for additional capacity resources to assure system reliability.

Purchased Power Capacity — APS's purchased power capacity under long-term contracts as of December 31, 2016 is summarized in the table below. All capacity values are based on net capacity unless otherwise noted.

Type	Dates Available	Capacity (MW)
Purchase Agreement (a)	Year-round through June 14, 2020	60
Exchange Agreement (b)	May 15 to September 15 annually through February 2021	480
Tolling Agreement	Year-round through May 2017	514
Tolling Agreement	Summer seasons through October 2019	560
Demand Response Agreement (c)	Summer seasons through 2024	25
Tolling Agreement (d)	Summer seasons from Summer 2020 through Summer 2025	565
Renewable Energy (e)	Various	629

- (a) Up to 60 MW of capacity is available; however, the amount of electricity available to APS under this agreement is based in large part on customer demand and is adjusted annually.
- (b) This is a seasonal capacity exchange agreement under which APS receives electricity during the summer peak season (from May 15 to September 15) and APS returns a like amount of electricity during the winter season (from October 15 to February 15).
- (c) The capacity under this agreement may be increased in 5 MW increments in each of 2015 and 2016 and 10 MW increments in years 2017 through 2024, up to a maximum of 50 MW.
- (d) This agreement was signed in response to APS's 2016 all source request for proposal seeking capacity resources.
- (e) Renewable energy purchased power agreements are described in detail below under "Current and Future Resources — Renewable Energy Standard — Renewable Energy Portfolio."

Current and Future Resources

Current Demand and Reserve Margin

Electric power demand is generally seasonal. In Arizona, demand for power peaks during the hot summer months. APS's 2016 peak one-hour demand on its electric system was recorded on June 19, 2016 at 7,051 MW, compared to the 2015 peak of 7,031 MW recorded on August 15, 2015. APS's reserve margin at the time of the 2016 peak demand, calculated using system load serving capacity, was 30%. For 2017, due to expiring purchase contracts, APS is procuring market resources to maintain its minimum 15% planning reserve criteria.

Future Resources and Resource Plan

APS filed its preliminary 2017 Integrated Resource Plan on March 1, 2016 and an updated preliminary 2017 Integrated Resource Plan on September 30, 2016. APS also held stakeholder meetings in February and November 2016 in addition to an ACC-led Integrated Resource Plan workshop in July 2016. The preliminary Integrated Resource Plan and associated stakeholder meetings are part of a modified planning process that allows time to incorporate implications of the Clean Power Plan as well as input from stakeholder meetings. The final Integrated Resource Plan will be submitted by or on April 3, 2017 and the ACC is expected to complete its review by February 1, 2018.

On September 11, 2014, APS announced that it would close Cholla Unit 2 and cease burning coal at the other APS-owned units (Units 1 and 3) at the plant by the mid-2020s, if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. APS closed Unit 2 on October 1, 2015. Previously, APS estimated Cholla

Unit 2's end of life to be 2033. APS is currently recovering a return on and of the net book value of the unit in base rates and is seeking recovery of the unit's decommissioning and other retirement-related costs over the remaining life of the plant in its current retail rate case. APS believes it will be allowed recovery of the remaining net book value of Unit 2 (\$116 million as of December 31, 2016), in addition to a return on its investment. In accordance with GAAP, in the third quarter of 2014, Unit 2's remaining net book value was reclassified from property, plant and equipment to a regulatory asset. If the ACC does not allow full recovery of the remaining net book value of Cholla Unit 2, all or a portion of the regulatory asset will be written off and APS's net income, cash flows, and financial position will be negatively impacted. (See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Cholla" above for details regarding the status of the EPA's rule related to Cholla.)

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Energy Imbalance Market

In 2015, APS and the CAISO, the operator for the majority of California's transmission grid, signed an agreement for APS to begin participation in the Energy Imbalance Market ("EIM"). APS's participation in the EIM began on October 1, 2016. The EIM allows for rebalancing supply and demand in 15-minute blocks with dispatching every five minutes before the energy is needed, instead of the traditional one hour blocks. APS expects that its participation in EIM will lower its fuel costs, improve visibility and situational awareness for system operations in the Western Interconnection power grid, and improve integration of APS's renewable resources.

Renewable Energy Standard

In 2006, the ACC adopted the RES. Under the RES, electric utilities that are regulated by the ACC must supply an increasing percentage of their retail electric energy sales from eligible renewable resources, including solar, wind, biomass, biogas and geothermal technologies. The renewable energy requirement is 7% of retail electric sales in 2017 and increases annually until it reaches 15% in 2025. In APS's 2009 retail rate case settlement agreement (the "2009 Settlement Agreement"), APS committed to have 1,700 GWh of new renewable resources in service by year-end 2015 in addition to its RES renewable resource commitments. APS met its settlement commitment and RES target for 2016.

A component of the RES is focused on stimulating development of distributed energy systems. Accordingly, under the RES, an increasing percentage of that requirement must be supplied from distributed energy resources. This distributed energy requirement is 30% of the overall RES requirement of 7% in 2017. The following table summarizes the RES requirement standard (not including the additional commitment required by the 2009 Settlement Agreement) and its timing:

	2017	2020	2025
RES as a % of retail electric sales	7%	10%	15%
Percent of RES to be supplied from distributed energy resources	30%	30%	30%

On April 21, 2015, the RES rules were amended to require utilities to report on all eligible renewable resources in their service territory, irrespective of whether the utility owns renewable energy credits associated with such renewable energy. The rules allow the ACC to consider such information in determining whether APS has satisfied the requirements of the RES.

Renewable Energy Portfolio. To date, APS has a diverse portfolio of existing and planned renewable resources totaling 1,480 MW, including solar, wind, geothermal, biomass and biogas. Of this portfolio, 1,440 MW are currently in operation and 40 MW are under contract for development or are under construction. Renewable resources in operation include 239 MW of facilities owned by APS, 629 MW of long-term purchased power agreements, and an estimated 539 MW of customer-sited, third-party owned distributed energy resources.

APS's strategy to achieve its RES requirements includes executing purchased power contracts for new facilities, ongoing development of distributed energy resources and procurement of new facilities to be owned by APS. See "Energy Sources and Resource Planning - Generation Facilities - Solar Facilities" above for information regarding APS-owned solar facilities.

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The following table summarizes APS's renewable energy sources currently in operation and under development. Agreements for the development and completion of future resources are subject to various conditions, including successful siting, permitting and interconnection of the projects to the electric grid.

	Location	Actual/ Target Commercial Operation Date	Term (Years)	Net Capacity In Operation (MW AC)	Net Capacity Planned/Under Development (MW AC)
APS Owned					
<i>Solar:</i>					
AZ Sun Program:					
Paloma	Gila Bend, AZ	2011		17	
Cotton Center	Gila Bend, AZ	2011		17	
Hyder Phase 1	Hyder, AZ	2011		11	
Hyder Phase 2	Hyder, AZ	2012		5	
Chino Valley	Chino Valley, AZ	2012		19	
Hyder II	Hyder, AZ	2013		14	
Foothills	Yuma, AZ	2013		35	
Gila Bend	Gila Bend, AZ	2014		32	
Luke AFB	Glendale, AZ	2015		10	
Desert Star	Buckeye, AZ	2015		10	
Subtotal AZ Sun Program				170	—
Multiple Facilities	AZ	Various		4	
Red Rock	Red Rock, AZ	2016		40	
<i>Distributed Energy:</i>					
APS Owned (a)	AZ	Various		25	
Total APS Owned				239	—
Purchased Power Agreements					
<i>Solar:</i>					
Solana	Gila Bend, AZ	2013	30	250	
RE Ajo	Ajo, AZ	2011	25	5	
Sun E AZ 1	Prescott, AZ	2011	30	10	
Saddle Mountain	Tonopah, AZ	2012	30	15	
Badger	Tonopah, AZ	2013	30	15	
Gillespie	Maricopa County, AZ	2013	30	15	
<i>Wind:</i>					
Aragonne Mesa	Santa Rosa, NM	2006	20	90	
High Lonesome	Mountainair, NM	2009	30	100	
Perrin Ranch Wind	Williams, AZ	2012	25	99	
<i>Geothermal:</i>					
Salton Sea	Imperial County, CA	2006	23	10	
<i>Biomass:</i>					
Snowflake	Snowflake, AZ	2008	15	14	
<i>Biogas:</i>					
Glendale Landfill	Glendale, AZ	2010	20	3	
NW Regional Landfill	Surprise, AZ	2012	20	3	
Total Purchased Power Agreements				629	—
Distributed Energy					
<i>Solar (b)</i>					
Third-party Owned	AZ	Various		539	40
Agreement 1	Bagdad, AZ	2011	25	15	
Agreement 2	AZ	2011-2012	20-21	18	
Total Distributed Energy				572	40
Total Renewable Portfolio				1,440	40

- (a) Includes Flagstaff Community Power Project, APS School and Government Program and APS Solar Partner Program.
- (b) Includes rooftop solar facilities owned by third parties. Distributed generation is produced in DC and is converted to AC for reporting purposes.

Demand Side Management

In December 2009, Arizona regulators placed an increased focus on energy efficiency and other demand side management programs to encourage customers to conserve energy, while incentivizing utilities to aid in these efforts that ultimately reduce the demand for energy. The ACC initiated its Energy Efficiency rulemaking, with a proposed Energy Efficiency Standard ("EES") of 22% cumulative annual energy savings by 2020. This standard was adopted and became effective on January 1, 2011. This standard will likely impact Arizona's future energy resource needs. (See Note 3 for energy efficiency and other demand side management obligations).

Competitive Environment and Regulatory Oversight

Retail

The ACC regulates APS's retail electric rates and its issuance of securities. The ACC must also approve any significant transfer or encumbrance of APS's property used to provide retail electric service and approve or receive prior notification of certain transactions between Pinnacle West, APS and their respective affiliates.

APS is subject to varying degrees of competition from other investor-owned electric and gas utilities in Arizona (such as Southwest Gas Corporation), as well as cooperatives, municipalities, electrical districts and similar types of governmental or non-profit organizations. In addition, some customers, particularly industrial and large commercial customers, may own and operate generation facilities to meet some or all of their own energy requirements. This practice is becoming more popular with customers installing or having installed products such as rooftop solar panels to meet or supplement their energy needs.

On April 14, 2010, the ACC issued a decision holding that solar vendors that install and operate solar facilities for non-profit schools and governments pursuant to a specific type of contract that calculates payments based on the energy produced are not "public service corporations" under the Arizona Constitution, and are therefore not regulated by the ACC. APS cannot predict when, and the extent to which, additional electric service providers will enter or re-enter APS's service territory.

On May 9, 2013, the ACC voted to re-examine the facilitation of a deregulated retail electric market in Arizona. The ACC subsequently opened a docket for this matter and received comments from a number of interested parties on the considerations involved in establishing retail electric deregulation in the state. One of these considerations was whether various aspects of a deregulated market, including setting utility rates on a "market" basis, would be consistent with the requirements of the Arizona Constitution. On September 11, 2013, after receiving legal advice from the ACC staff, the ACC voted 4-1 to close the current docket and await full Arizona Constitutional authority before any further examination of this matter. The motion approved by the ACC also included opening one or more new dockets in the future to explore options to offer more rate choices to customers and innovative changes within the existing cost-of-service regulatory model that could include elements of competition. The ACC opened a docket on November 4, 2013 to explore technological advances and innovative changes within the electric utility industry. A series of workshops in this docket were held in 2014 and another in February of 2015. No further workshops are scheduled and no actions were taken as a result of these workshops.

Wholesale

FERC regulates rates for wholesale power sales and transmission services. (See Note 3 for information regarding APS's transmission rates.) During 2016, approximately 3.5% of APS's electric operating revenues resulted from such sales and services. APS's wholesale activity primarily consists of managing fuel and purchased power supplies to serve retail customer energy requirements. APS also sells, in the wholesale market, its generation output that is not needed for APS's Native Load and, in doing so, competes with other utilities, power marketers and independent power producers. Additionally, subject to specified parameters, APS hedges both electricity and fuels. The majority of these activities are undertaken to mitigate risk in APS's portfolio.

Subpoena from Arizona Corporation Commissioner Robert Burns

On August 25, 2016, Commissioner Burns, individually and not by action of the ACC as a whole, filed subpoenas in APS's current retail rate proceeding to APS and Pinnacle West for the production of records and information relating to a range of expenditures from 2011 through 2016. The subpoenas requested information concerning marketing and advertising expenditures, charitable donations, lobbying expenses, contributions to 501(c)(3) and (c)(4) nonprofits and political contributions. The return date for the production of information was set as September 15, 2016. The subpoenas also sought testimony from Company personnel having knowledge of the material, including the Chief Executive Officer.

On September 9, 2016, APS filed with the ACC a motion to quash the subpoenas or, alternatively to stay APS's obligations to comply with the subpoenas and decline to decide APS's motion pending court proceedings. Contemporaneously with the filing of this motion, APS and Pinnacle West filed a complaint for special action and declaratory judgment in the Superior Court of Arizona for Maricopa County, seeking a declaratory judgment that Commissioner Burns' subpoenas are contrary to law. On September 15, 2016, APS produced all non-confidential and responsive documents and offered to produce any remaining responsive documents that are confidential after an appropriate confidentiality agreement is signed.

On February 7, 2017, Commissioner Burns opened a new ACC docket and indicated that its purpose is to study and rectify problems with transparency and disclosure regarding financial contributions from regulated monopolies or other stakeholders who may appear before the ACC that may directly or indirectly benefit an ACC Commissioner, a candidate for ACC Commissioner, or key ACC staff. As part of this docket, Commissioner Burns set March 24, 2017 as a deadline for APS to produce all information previously requested through the subpoenas. Commissioner Burns has also scheduled a workshop in this matter for March 17, 2017. APS and Pinnacle West cannot predict the outcome of this matter.

Environmental Matters

Climate Change

Legislative Initiatives. There have been no recent attempts by Congress to pass legislation that would regulate greenhouse gas ("GHG") emissions, and it is doubtful whether the 115th Congress will consider a climate change bill. In the event climate change legislation ultimately passes, the actual economic and operational impact of such legislation on APS depends on a variety of factors, none of which can be fully known until a law is written, enacted and the specifics of the resulting program are established. These factors include the terms of the legislation with regard to allowed GHG emissions; the cost to reduce emissions; in the event a cap-and-trade program is established, whether any permitted emissions allowances will be allocated to source operators free of cost or auctioned (and, if so, the cost of those allowances in the marketplace) and

whether offsets and other measures to moderate the costs of compliance will be available; and, in the event of a carbon tax, the amount of the tax per pound of carbon dioxide ("CO₂") equivalent emitted.

In addition to federal legislative initiatives, state-specific initiatives may also impact our business. While Arizona has no pending legislation and no proposed agency rule regulating GHGs in Arizona, the California legislature enacted AB 32 and SB 1368 in 2006 to address GHG emissions. In October 2011, the California Air Resources Board approved final regulations that established a state-wide cap on GHG emissions beginning on January 1, 2013 and established a GHG allowance trading program under that cap. The first phase of the program, which applies to, among other entities, importers of electricity, commenced on January 1, 2013. Under the program, entities selling electricity into California, including APS, must hold carbon allowances to cover GHG emissions associated with electricity sales into California from outside the state. APS is authorized to recover the cost of these carbon allowances through the PSA.

Regulatory Initiatives. In 2009, EPA determined that GHG emissions endanger public health and welfare. As a result of this "endangerment finding," EPA determined that the Clean Air Act required new regulatory requirements for new and modified major GHG emitting sources, including power plants. APS will generally be required to consider the impact of GHG emissions as part of its traditional New Source Review ("NSR") analysis for new major sources and major modifications to existing plants.

On June 2, 2014, EPA issued two proposed rules to regulate GHG emissions from modified and reconstructed electric generating units ("EGUs") pursuant to Section 111(b) of the Clean Air Act and existing fossil fuel-fired power plants pursuant to Clean Air Act Section 111(d).

On August 3, 2015, EPA finalized carbon pollution standards for existing, new, modified, and reconstructed EGUs. EPA's final rules require newly built fossil fuel-fired EGUs, along with those undergoing modification or reconstruction, to meet CO₂ performance standards based on a combination of best operating practices and equipment upgrades. EPA established separate performance standards for two types of EGUs: stationary combustion turbines, typically natural gas; and electric utility steam generating units, typically coal.

With respect to existing power plants, EPA's recently finalized "Clean Power Plan" imposes state-specific goals or targets to achieve reductions in CO₂ emission rates from existing EGUs measured from a 2012 baseline. In a significant change from the proposed rule, EPA's final performance standards apply directly to specific units based upon their fuel-type and configuration (i.e., coal- or oil-fired steam plants versus combined cycle natural gas plants). As such, each state's goal is an emissions performance standard that reflects the fuel mix employed by the EGUs in operation in those states. The final rule provides guidelines to states to help develop their plans for meeting the interim (2022-2029) and final (2030 and beyond) emission performance standards, with three distinct compliance periods within that timeframe. States were originally required to submit their plans to EPA by September 2016, with an optional two-year extension provided to states establishing a need for additional time; however, this timing will be impacted by the court-imposed stay described below.

Prior to the court-imposed stay described below, ADEQ, with input from a technical working group comprised of Arizona utilities and other stakeholders, was working to develop a compliance plan for submittal to EPA. Since the imposition of the stay, ADEQ is continuing to assess alternatives while completing outreach and soliciting feedback from stakeholders. In addition to these ongoing state proceedings, EPA has taken public comments on proposed model rules and a proposed federal compliance plan, which included consideration as to how the Clean Power Plan will apply to EGUs on tribal land such as the Navajo Nation.

The legality of the Clean Power Plan is being challenged in the U.S. Court of Appeals for the D.C. Circuit; the parties raising this challenge include, among others, the ACC. On February 9, 2016, the U.S.

Supreme Court granted a stay of the Clean Power Plan pending judicial review of the rule, which temporarily delays compliance obligations under the Clean Power Plan. We cannot predict the extent of the delay.

With respect to our Arizona generating units, we are currently evaluating the range of compliance options available to ADEQ, including whether Arizona deploys a rate- or mass-based compliance plan. Based on the fuel-mix and location of our Arizona EGUs, and the significant investments we have made in renewable generation and demand-side energy efficiency, if ADEQ selects a rate-based compliance plan, we believe that we will be able to comply with the Clean Power Plan for our Arizona generating units in a manner that will not have material financial or operational impacts to the Company. On the other hand, if ADEQ selects a mass-based approach to compliance with the Clean Power Plan, our annual cost of compliance could be material. These costs could include costs to acquire mass-based compliance allowances.

As to our facilities on the Navajo Nation, EPA has yet to determine whether or to what extent EGUs on the Navajo Nation will be required to comply with the Clean Power Plan. EPA has proposed to determine that it is necessary or appropriate to impose a federal plan on the Navajo Nation for compliance with the Clean Power Plan. In response, we filed comments with EPA advocating that such a federal plan is neither necessary nor appropriate to protect air quality on the Navajo Nation. If EPA reaches a determination that is consistent with our preferred approach for the Navajo Nation, we believe the Clean Power Plan will not have material financial or operational impacts on our operations within the Navajo Nation.

Alternatively, if EPA determines that a federal plan is necessary or appropriate for the Navajo Nation, and depending on our need for future operations at our EGUs located there, we may be unable to comply with the federal plan unless we acquire mass-based allowances or emission rate credits within established carbon trading markets, or curtail our operations. Subject to the uncertainties set forth below, and assuming that EPA establishes a federal plan for the Navajo Nation that requires carbon allowances or credits to be surrendered for plan compliance, it is possible we will be required to purchase some quantity of credits or allowances, the cost of which could be material.

Because ADEQ has not issued its plan for Arizona, and because we do not know whether EPA will decide to impose a plan or, if so, what that plan will require, there are a number of uncertainties associated with our potential cost exposure. These uncertainties include: whether judicial review will result in the Clean Power Plan being vacated in whole or in part or, if not, the extent of any resulting compliance deadline delays; whether any plan will be imposed for EGUs on the Navajo Nation; the future existence and liquidity of allowance or credit compliance trading markets; the applicability of existing contractual obligations with current and former owners of our participant-owned coal-fired EGUs; the type of federal or state compliance plan (either rate- or mass-based); whether or not the trading of allowances or credits will be authorized mechanisms for compliance with any final EPA or ADEQ plan; and how units that have been closed will be treated for allowance or credit allocation purposes.

In the event that the incurrence of compliance costs is not economically viable or prudent for our operations in Arizona or on the Navajo Nation, or if we do not have the option of acquiring allowances to account for the emissions from our operations, we may explore other options, including reduced levels of output or potential plant closures, as alternatives to purchasing allowances. Given these uncertainties, our analysis of the available compliance options remains ongoing, and additional information or considerations may arise that change our expectations.

Company Response to Climate Change Initiatives . We have undertaken a number of initiatives that address emission concerns, including renewable energy procurement and development, promotion of programs and rates that promote energy conservation, renewable energy use, and energy efficiency. (See “Energy Sources and Resource Planning - Current and Future Resources” above for details of these plans and

initiatives.) APS currently has a diverse portfolio of renewable resources, including solar, wind, geothermal, biogas, and biomass, and we expect the percentage of renewable energy in our resource portfolio to increase over the coming years.

APS prepares an inventory of GHG emissions from its operations. This inventory is reported to EPA under the EPA GHG Reporting Program and is voluntarily communicated to the public in Pinnacle West's annual Corporate Responsibility Report, which is available on our website (www.pinnaclewest.com). The report provides information related to the Company and its approach to sustainability and its workplace and environmental performance. The information on Pinnacle West's website, including the Corporate Responsibility Report, is not incorporated by reference into or otherwise a part of this report.

EPA Environmental Regulation

Regional Haze Rules . In 1999, EPA announced regional haze rules to reduce visibility impairment in national parks and wilderness areas. The rules require states (or, for sources located on tribal land, EPA) to determine what pollution control technologies constitute the BART for certain older major stationary sources, including fossil-fired power plants. EPA subsequently issued the Clean Air Visibility Rule, which provides guidelines on how to perform a BART analysis.

The Four Corners and Navajo Plant participants' obligations to comply with EPA's final BART determinations (and Cholla's obligations to comply with ADEQ's and EPA's determinations), coupled with the financial impact of potential future climate change legislation, other environmental regulations, and other business considerations, could jeopardize the economic viability of these plants or the ability of individual participants to continue their participation in these plants.

Cholla. APS believes that EPA's original 2012 final rule establishing controls constituting BART for Cholla, which would require installation of selective catalytic reduction ("SCR") controls with a cost to APS of approximately \$100 million is unsupported and that EPA had no basis for disapproving Arizona's State Implementation Plan ("SIP") and promulgating a Federal Implementation Plan ("FIP") that is inconsistent with the state's considered BART determinations under the regional haze program. Accordingly, on February 1, 2013, APS filed a Petition for Review of the final BART rule in the United States Court of Appeals for the Ninth Circuit. Briefing in the case was completed in February 2014.

In September 2014, APS met with EPA to propose a compromise BART strategy. Pending certain regulatory approvals, APS would permanently close Cholla Unit 2 and cease burning coal at Units 1 and 3 by the mid-2020s. (See Note 3 for details related to the resulting regulatory asset.) APS made the proposal with the understanding that additional emission control equipment is unlikely to be required in the future because retiring and/or converting the units as contemplated in the proposal is more cost effective than, and will result in increased visibility improvement over, the current BART requirements for NOx imposed on the Cholla units under EPA's BART FIP. APS's proposal involves state and federal rulemaking processes. In light of these ongoing administrative proceedings, on February 19, 2015, APS, PacifiCorp (owner of Cholla Unit 4), and EPA jointly moved the court to sever and hold in abeyance those claims in the litigation pertaining to Cholla pending regulatory actions by the state and EPA. The court granted the parties' unopposed motion on February 20, 2015.

On October 16, 2015, ADEQ issued a revised operating permit for Cholla, which incorporates APS's proposal, and subsequently submitted a proposed revision to the SIP to the EPA, which would incorporate the new permit terms. On June 30, 2016, EPA issued a proposed rule approving a revision to the Arizona SIP that incorporates APS's compromise approach for compliance with the Regional Haze program. EPA signed the final rule approving the Agency's proposal on January 13, 2017. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot

predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

Four Corners. Based on EPA's final standards, APS estimates that its 63% share of the cost of required controls for Four Corners Units 4 and 5 would be approximately \$400 million. In addition, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in Four Corners Units 4 and 5. 4CA purchased the El Paso interest on July 6, 2016. NTEC has the option to purchase the interest within a certain timeframe pursuant to an option granted to NTEC. In December 2015, NTEC provided notice of its intent to exercise the option. The cost of the pollution controls related to the 7% interest is approximately \$45 million, which will be assumed by the ultimate owner of the 7% interest.

Navajo Plant. On July 28, 2014, EPA issued a final Navajo Plant BART rule. APS estimates that its share of costs for upgrades at the Navajo Plant, based on EPA's FIP, could be up to approximately \$200 million. In October 2014, a coalition of environmental groups, an Indian tribe and others filed petitions for review in the United States Court of Appeals for the Ninth Circuit asking the Court to review EPA's final BART rule for the Navajo Plant. We cannot predict the outcome of this review process. See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Mercury and other Hazardous Air Pollutants. In 2011, EPA issued rules establishing maximum achievable control technology standards to regulate emissions of mercury and other hazardous air pollutants from fossil-fired plants. APS estimates that the cost for the remaining equipment necessary to meet these standards is approximately \$8 million for Cholla. No additional equipment is needed for Four Corners Units 4 and 5 to comply with these rules. SRP, the operating agent for the Navajo Plant, estimates that APS's share of costs for equipment necessary to comply with the rules is approximately \$1 million, the majority of which has already been incurred. Litigation concerning the rules, including supplemental analyses EPA has prepared in support of the MATS regulation, is ongoing. These proceedings do not materially impact APS. Regardless of the results from further judicial or administrative proceedings concerning the MATS rulemaking, the Arizona State Mercury Rule, the stringency of which is roughly equivalent to that of MATS, would still apply to Cholla.

Coal Combustion Waste. On December 19, 2014, EPA issued its final regulations governing the handling and disposal of CCR, such as fly ash and bottom ash. The rule regulates CCR as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act ("RCRA") and establishes national minimum criteria for existing and new CCR landfills and surface impoundments and all lateral expansions consisting of location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post closure care, and recordkeeping, notification, and Internet posting requirements. The rule generally requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close, and further requires the closure of any CCR landfill or surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity. While EPA has chosen to regulate the disposal of CCR in landfills and surface impoundments as non-hazardous waste under the final rule, the agency makes clear that it will continue to evaluate any risks associated with CCR disposal and leaves open the possibility that it may regulate CCR as a hazardous waste under RCRA Subtitle C in the future.

On December 16, 2016, President Obama signed the Water Infrastructure Improvements for the Nation ("WIIN") Act into law, which contains a number of provisions requiring EPA to modify the self-implementing provisions of the Agency's current CCR rules under Subtitle D. Such modifications include new EPA authority to directly enforce the CCR rules through the use of administrative orders and providing states, like Arizona, where the Cholla facility is located, the option of developing CCR disposal unit permitting programs, subject to EPA approval. For facilities in states that do not develop state-specific permitting programs, EPA is required to develop a federal permit program, pending the availability of congressional appropriations. By contrast, for facilities located within the boundaries of Native American tribal reservations, such as the Navajo Nation, where the Navajo Plant and Four Corners facilities are located, EPA is required to develop a federal permit program regardless of appropriated funds. Because EPA has yet to undertake rulemaking proceedings to implement the CCR provisions of the WIIN Act, and Arizona has yet to determine whether it will develop a state-specific permitting program, it is unclear what effects the CCR provisions of the WIIN Act will have on APS's management of CCR.

APS currently disposes of CCR in ash ponds and dry storage areas at Cholla and Four Corners. APS estimates that its share of incremental costs to comply with the CCR rule for Four Corners is approximately \$15 million. APS is currently evaluating compliance alternatives for Cholla and estimates that its share of incremental costs to comply with the CCR rule for this plant is in the range of \$5 million to \$40 million based upon which compliance alternatives are ultimately selected. The Navajo Plant currently disposes of CCR in a dry landfill storage area. APS estimates that its share of incremental costs to comply with the CCR rule for the Navajo Plant is approximately \$1 million, the majority of which has already been incurred. Additionally, the CCR rule requires ongoing groundwater monitoring. Depending upon the results of such monitoring at each of Cholla, Four Corners and the Navajo Plant, we may be required to take corrective actions, the costs of which we are unable to reasonably estimate at this time.

Pursuant to a June 24, 2016 order by the D.C. Circuit Court of Appeals in the litigation by industry- and environmental-groups challenging EPA's CCR regulations, within the next three years EPA is required to complete a rulemaking proceeding concerning whether or not boron must be included on the list of groundwater constituents that might trigger corrective action under EPA's CCR rules. EPA is not required to take final action approving the inclusion of boron, but EPA must propose and consider its inclusion. Should EPA take final action adding boron to the list of groundwater constituents that might trigger corrective action, any resulting corrective action measures may increase APS's costs of compliance with the CCR rule at our coal-fired generating facilities. At this time, though, APS cannot predict when EPA will commence its rulemaking concerning boron or the eventual results of those proceedings.

Effluent Limitation Guidelines. On September 30, 2015, EPA finalized revised effluent limitation guidelines establishing technology-based wastewater discharge limitations for fossil-fired EGUs. EPA's final regulation targets metals and other pollutants in wastewater streams originating from fly ash and bottom ash handling activities, scrubber activities, and coal ash disposal leachate. Based upon an earlier set of preferred alternatives, the final effluent limitations generally require chemical precipitation and biological treatment for flue gas desulfurization scrubber wastewater, "zero discharge" from fly ash and bottom ash handling, and impoundment for coal ash disposal leachate. Compliance with these limitations will be required in connection with National Pollution Discharge Elimination System ("NPDES") discharge permit renewals, which occur in five-year intervals, that arise between 2018 and 2023. Until a draft NPDES permit for Four Corners is proposed during that timeframe, we are uncertain what will be required to control these discharges in compliance with the finalized effluent limitations at that facility. Cholla and the Navajo Plant do not require NPDES permitting.

Ozone National Ambient Air Quality Standards. On October 1, 2015, EPA finalized revisions to the primary ground-level ozone national ambient air quality standards ("NAAQS") at a level of 70 parts per billion.

("ppb"). With ozone standards becoming more stringent, our fossil generation units will come under increasing pressure to reduce emissions of nitrogen oxides and volatile organic compounds, and to generate emission offsets for new projects or facility expansions located in ozone nonattainment areas. EPA is expected to designate attainment and nonattainment areas relative to the new 70 ppb standard by October 1, 2017. Depending on when EPA approves attainment designations for the Arizona and Navajo Nation jurisdictions in which our fossil generation units are located, revisions to SIPs and FIPs, respectively, implementing required controls to achieve the new 70 ppb standard are expected to be in place between 2020 and 2021. At this time, because proposed SIPs and FIPs implementing the revised ozone NAAQSs have yet to be released, APS is unable to predict what impact the adoption of these standards may have on the Company. APS will continue to monitor these standards as they are implemented within the jurisdictions affecting APS.

Superfund-Related Matters. The Comprehensive Environmental Response Compensation and Liability Act ("Superfund") establishes liability for the cleanup of hazardous substances found contaminating the soil, water or air. Those who generated, transported or disposed of hazardous substances at a contaminated site are among those who are potentially responsible parties ("PRPs"). PRPs may be strictly, and often are jointly and severally, liable for clean-up. On September 3, 2003, EPA advised APS that EPA considers APS to be a PRP in the Motorola 52nd Street Superfund Site, Operable Unit 3 ("OU3") in Phoenix, Arizona. APS has facilities that are within this Superfund site. APS and Pinnacle West have agreed with EPA to perform certain investigative activities of the APS facilities within OU3. In addition, on September 23, 2009, APS agreed with EPA and one other PRP to voluntarily assist with the funding and management of the site-wide groundwater remedial investigation and feasibility study work plan ("RI/FS"). The OU3 working group parties have agreed to a schedule with EPA that calls for the submission of a revised draft RI/FS by June 2017. We estimate that our costs related to this investigation and study will be approximately \$2 million. We anticipate incurring additional expenditures in the future, but because the overall investigation is not complete and ultimate remediation requirements are not yet finalized, at the present time expenditures related to this matter cannot be reasonably estimated.

On August 6, 2013, the Roosevelt Irrigation District ("RID") filed a lawsuit in Arizona District Court against APS and 24 other defendants, alleging that RID's groundwater wells were contaminated by the release of hazardous substances from facilities owned or operated by the defendants. The lawsuit also alleges that, under Superfund laws, the defendants are jointly and severally liable to RID. The allegations against APS arise out of APS's current and former ownership of facilities in and around OU3. As part of a state governmental investigation into groundwater contamination in this area, on January 25, 2015, ADEQ sent a letter to APS seeking information concerning the degree to which, if any, APS's current and former ownership of these facilities may have contributed to groundwater contamination in this area. APS responded to ADEQ on May 4, 2015. On December 16, 2016, two RID contractors filed ancillary lawsuits for recovery of costs against APS and the other defendants. We are unable to predict the outcome of these matters; however, we do not expect the outcome to have a material impact on our financial position, results of operations or cash flows.

Manufactured Gas Plant Sites. Certain properties which APS now owns or which were previously owned by it or its corporate predecessors were at one time sites of, or sites associated with, manufactured gas plants. APS is taking action to voluntarily remediate these sites. APS does not expect these matters to have a material adverse effect on its financial position, results of operations or cash flows.

Federal Agency Environmental Lawsuit Related to Four Corners

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the ESA and NEPA in providing the federal approvals necessary to extend operations at the Four Corners Power Plant and

the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Navajo Nation Environmental Issues

Four Corners and the Navajo Plant are located on the Navajo Reservation and are held under easements granted by the federal government, as well as leases from the Navajo Nation. See "Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities" above for additional information regarding these plants.

In July 1995, the Navajo Nation enacted the Navajo Nation Air Pollution Prevention and Control Act, the Navajo Nation Safe Drinking Water Act, and the Navajo Nation Pesticide Act (collectively, the "Navajo Acts"). The Navajo Acts purport to give the Navajo Nation Environmental Protection Agency authority to promulgate regulations covering air quality, drinking water, and pesticide activities, including those activities that occur at Four Corners and the Navajo Plant. On October 17, 1995, the Four Corners participants and the Navajo Plant participants each filed a lawsuit in the District Court of the Navajo Nation, Window Rock District, challenging the applicability of the Navajo Acts as to Four Corners and the Navajo Plant. The Court has stayed these proceedings pursuant to a request by the parties, and the parties are seeking to negotiate a settlement.

In April 2000, the Navajo Nation Council approved operating permit regulations under the Navajo Nation Air Pollution Prevention and Control Act. APS believes the Navajo Nation exceeded its authority when it adopted the operating permit regulations. On July 12, 2000, the Four Corners participants and the Navajo Plant participants each filed a petition with the Navajo Supreme Court for review of these regulations. Those proceedings have been stayed, pending the settlement negotiations mentioned above. APS cannot currently predict the outcome of this matter.

On May 18, 2005, APS, SRP, as the operating agent for the Navajo Plant, and the Navajo Nation executed a Voluntary Compliance Agreement to resolve their disputes regarding the Navajo Nation Air Pollution Prevention and Control Act. As a result of this agreement, APS sought, and the courts granted, dismissal of the pending litigation in the Navajo Nation Supreme Court and the Navajo Nation District Court, to the extent the claims relate to the Clean Air Act. The agreement does not address or resolve any dispute relating to other Navajo Acts. APS cannot currently predict the outcome of this matter.

Water Supply

Assured supplies of water are important for APS's generating plants. At the present time, APS has adequate water to meet its needs. The Four Corners region, in which Four Corners is located, has historically experienced drought conditions that may affect the water supply for the plants if adequate moisture is not received in the watershed that supplies the area. However, during the past 12 months the region has received snowfall and precipitation sufficient to recover the Navajo Reservoir to an optimum operating level, reducing the probability of shortage in future years. Although the watershed and reservoirs are in a good condition at this time, APS is continuing to work with area stakeholders to implement agreements to minimize the effect, if any, on future drought conditions that could have an impact on operations of its plants.

Conflicting claims to limited amounts of water in the southwestern United States have resulted in numerous court actions, which, in addition to future supply conditions, have the potential to impact APS's operations.

San Juan River Adjudication. Both groundwater and surface water in areas important to APS's operations have been the subject of inquiries, claims, and legal proceedings, which will require a number of years to resolve. APS is one of a number of parties in a proceeding, filed March 13, 1975, before the Eleventh Judicial District Court in New Mexico to adjudicate rights to a stream system from which water for Four Corners is derived. An agreement reached with the Navajo Nation in 1985, however, provides that if Four Corners loses a portion of its rights in the adjudication, the Navajo Nation will provide, for an agreed upon cost, sufficient water from its allocation to offset the loss. In addition, APS is a party to a water contract that allows the company to secure water for Four Corners in the event of a water shortage and is a party to a shortage sharing agreement, which provides for the apportionment of water supplies to Four Corners in the event of a water shortage in the San Juan River Basin.

Gila River Adjudication. A summons served on APS in early 1986 required all water claimants in the Lower Gila River Watershed in Arizona to assert any claims to water on or before January 20, 1987, in an action pending in Arizona Superior Court. Palo Verde is located within the geographic area subject to the summons. APS's rights and the rights of the other Palo Verde participants to the use of groundwater and effluent at Palo Verde are potentially at issue in this action. As operating agent of Palo Verde, APS filed claims that dispute the court's jurisdiction over the Palo Verde participants' groundwater rights and their contractual rights to effluent relating to Palo Verde. Alternatively, APS seeks confirmation of such rights. Several of APS's other power plants are also located within the geographic area subject to the summons. APS's claims dispute the court's jurisdiction over APS's groundwater rights with respect to these plants. Alternatively, APS seeks confirmation of such rights. In November 1999, the Arizona Supreme Court issued a decision confirming that certain groundwater rights may be available to the federal government and Indian tribes. In addition, in September 2000, the Arizona Supreme Court issued a decision affirming the lower court's criteria for resolving groundwater claims. Litigation on both of these issues has continued in the trial court. In December 2005, APS and other parties filed a petition with the Arizona Supreme Court requesting interlocutory review of a September 2005 trial court order regarding procedures for determining whether groundwater pumping is affecting surface water rights. The Arizona Supreme Court denied the petition in May 2007, and the trial court is now proceeding with implementation of its 2005 order. No trial date concerning APS's water rights claims has been set in this matter.

Little Colorado River Adjudication. APS has filed claims to water in the Little Colorado River Watershed in Arizona in an action pending in the Apache County, Arizona, Superior Court, which was originally filed on September 5, 1985. APS's groundwater resource utilized at Cholla is within the geographic area subject to the adjudication and, therefore, is potentially at issue in the case. APS's claims dispute the court's jurisdiction over its groundwater rights. Alternatively, APS seeks confirmation of such rights. Other claims have been identified as ready for litigation in motions filed with the court. No trial date concerning APS's water rights claims has been set in this matter.

Although the above matters remain subject to further evaluation, APS does not expect that the described litigation will have a material adverse impact on its financial position, results of operations, or cash flows.

BUSINESS OF OTHER SUBSIDIARIES

Bright Canyon Energy

On July 31, 2014, Pinnacle West announced its creation of a wholly-owned subsidiary, BCE. BCE will focus on new growth opportunities that leverage the Company's core expertise in the electric energy industry. BCE's first initiative is a 50/50 joint venture with BHE U.S. Transmission LLC, a subsidiary of Berkshire Hathaway Energy Company. The joint venture, named TransCanyon, is pursuing independent transmission opportunities within the eleven states that comprise the Western Electricity Coordinating Council, excluding opportunities related to transmission service that would otherwise be provided under the tariffs of the retail service territories of the venture partners' utility affiliates. TransCanyon continues to pursue transmission development opportunities in the western United States consistent with its strategy.

On March 29, 2016, TransCanyon entered into a strategic alliance agreement with Pacific Gas and Electric Company ("PG&E") to jointly pursue competitive transmission opportunities solicited by the CAISO, the operator for the majority of California's transmission grid. TransCanyon and PG&E intend to jointly engage in the development of future transmission infrastructure and compete to develop, build, own and operate transmission projects approved by the CAISO.

El Dorado

El Dorado owns minority interests in several energy-related investments and Arizona community-based ventures. El Dorado's short-term goal is to prudently realize the value of its existing investments. As of December 31, 2016, El Dorado had total assets of approximately \$11 million. El Dorado is not expected to contribute in any material way to our future financial performance, nor will it require any material amounts of capital over the next three years.

4CA

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generating Facilities - Coal-Fueled Generating Facilities - Four Corners" above for information regarding 4CA. As of December 31, 2016, 4CA had total assets of approximately \$69 million.

OTHER INFORMATION

Subpoenas

Pinnacle West has received grand jury subpoenas issued in connection with an investigation by the office of the United States Attorney for the District of Arizona. The subpoenas seek information principally pertaining to the 2014 statewide election races in Arizona for Secretary of State and for positions on the ACC. The subpoenas request records involving certain Pinnacle West officers and employees, including the Company's Chief Executive Officer, as well as communications between Pinnacle West personnel and a former ACC Commissioner. Pinnacle West is cooperating fully with the United States Attorney's office in this matter.

Other Information

Pinnacle West, APS and El Dorado are all incorporated in the State of Arizona. BCE and 4CA are incorporated in Delaware. Additional information for each of these companies is provided below:

	Principal Executive Office Address	Year of Incorporation	Approximate Number of Employees at December 31, 2016
Pinnacle West	400 North Fifth Street Phoenix, AZ 85004	1985	89
APS	400 North Fifth Street P.O. Box 53999 Phoenix, AZ 85072-3999	1920	6,244
BCE	400 East Van Buren Phoenix, AZ 85004	2014	6
El Dorado	400 East Van Buren Phoenix, AZ 85004	1983	—
4CA	400 North Fifth Street Phoenix, AZ 85004	2016	—
Total			6,339

The APS number includes employees at jointly-owned generating facilities (approximately 2,628 employees) for which APS serves as the generating facility manager. Approximately 1,613 APS employees are union employees, represented by the International Brotherhood of Electrical Workers ("IBEW") or the United Security Professionals of America ("USPA"). APS concluded negotiations with IBEW representatives over the new collective bargaining agreement in April 2015, and the new agreement is in place until March 31, 2018. The contract provides an average wage increase of 2.0% for the first year, 2.25% for the second year and 3.0% for the third year. The Company concluded negotiations with the USPA over the terms of a new collective bargaining agreement in May of 2014, and the new agreement is in place until May 31, 2017.

WHERE TO FIND MORE INFORMATION

We use our website (www.pinnaclewest.com) as a channel of distribution for material Company information. The following filings are available free of charge on our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission ("SEC"): Annual Reports on Form 10-K, definitive proxy statements for our annual shareholder meetings, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports. Our board and committee charters, Code of Ethics for Financial Executives, Code of Ethics and Business Practices and other corporate governance information is also available on the Pinnacle West website. Pinnacle West will post any amendments to the Code of Ethics for Financial Executives and Code of Ethics and Business Practices, and any waivers that are required to be disclosed by the rules of either the SEC or the New York Stock Exchange, on its website. The information on Pinnacle West's website is not incorporated by reference into this report.

You can request a copy of these documents, excluding exhibits, by contacting Pinnacle West at the following address: Pinnacle West Capital Corporation, Office of the Corporate Secretary, Mail Station 8602, P.O. Box 53999, Phoenix, Arizona 85072-3999 (telephone 602-250-4400).

EXHIBIT E

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BY A. FIMBRES, DEP

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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 COMMISSIONER ROBERT BURNS, a
12 member of the Arizona Corporation
13 Commission, in his official capacity,

14 Plaintiff,

15 v.

16 ARIZONA PUBLIC SERVICE COMPANY,
17 an Arizona public service corporation, and
18 PINNACLE WEST CAPITAL
19 CORPORATION, an Arizona corporation, and
20 DONALD BRANDT, an individual,

21 Defendants.

Case No. CV 2017-001831

COMPLAINT
(Declaratory Judgment)

22 For his Complaint seeking a final judgment declaring his rights and authority as an
23 elected Commissioner of the Arizona Corporation Commission to compel compliance by the
24 Defendants with subpoenas issued by him in his official capacity and pursuant to his express
25 authority under the Constitution and laws of the State of Arizona, Plaintiff Commissioner
26 Robert Burns ("Commissioner Burns") alleges as follows:

27 . . .

28 . . .

The Parties

1. The Arizona Corporation Commission is a governmental body of the State of Arizona, created and empowered through the Constitution and the laws of the State of Arizona.

2. The Arizona Constitution, at Article XV, Section 1(B) creates the Corporation Commission, to be composed of five persons who shall be elected at the general election of the voters of Arizona.

3. Plaintiff Commissioner Robert Burns is a duly elected Commissioner of the Arizona Corporation Commission.

4. By virtue of the office to which the voters of Arizona have elected him, Commissioner Burns is vested with all those authorities and delegated powers enumerated in and implied by the provisions of the Arizona Constitution and the laws and judicial precedent of the State of Arizona for his elected position.

5. By virtue of his office as a Commissioner, Commissioner Burns is authorized to seek judicial relief when a member of the public attempts to interfere with or to refuse to comply with the duly authorized exercise of the authorities and responsibilities of his office.

6. Where such attempts involve the intentional refusal of a monopoly corporation subject to regulation by the Arizona Corporation Commission, its affiliate corporation, or its officers to comply with a lawful subpoena or other investigatory directive of his office, Commissioner Burns is authorized to seek, pursuant to the Arizona Uniform Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.* and the constitutional and other laws of the State of Arizona, a judicial declaration confirming his authority to order compliance with such subpoenas or other investigatory directives.

7. Defendant Arizona Public Service Company ("APS") is an Arizona public service corporation that provides either retail or wholesale electric service to a large portion of the State of Arizona. APS has conducted business in the State of Arizona, and in Maricopa County in particular, at all times relevant to the allegations of this Complaint.

1 8. APS has taken actions in Maricopa County, Arizona from which the allegations
2 of this Complaint arise.

3 9. Defendant APS is also a regulated monopoly organization subject to regulation
4 by the Arizona Corporation Commission.

5 10. As a result of the business advantages provided to APS through its status as a
6 monopoly electric service provider, APS has become one of Arizona's largest commercial
7 enterprises.

8 11. Defendant Pinnacle West Capital Corporation ("Pinnacle West") is a publicly
9 traded corporation incorporated in Arizona. Pinnacle West has done business at all times
10 relevant to the allegations in this Complaint in the State of Arizona, and in Maricopa County in
11 particular.

12 12. Pinnacle West has taken actions in Maricopa County, Arizona from which the
13 allegations of this Complaint arise.

14 13. In the U.S. Securities and Exchange Commission Form 10-K filed jointly for
15 Pinnacle West and APS for the fiscal year ended December 31, 2016, Pinnacle stated:

16 Pinnacle West is a holding company that conducts business through its subsidiaries. We
17 derive essentially all of our revenues and earnings from our wholly-owned subsidiary,
18 APS. APS is a vertically-integrated electric utility that provides either retail or
19 wholesale electric service to most of the State of Arizona, with the major exceptions of
about one-half of the Phoenix metropolitan area, the Tucson metropolitan area and
Mohave County in northwestern Arizona.

20 14. Pinnacle West reported operating revenues on its consolidated financial
21 statements for 2016 of over \$3.49 billion, with net income attributable to common
22 shareholders of over \$442 million. It further reported electric operating revenues for APS in
23 2016 of over \$3.48 billion, and net income to APS for 2016 of over \$462 million.

24 15. Pinnacle West further reported on its 2016 consolidated financial statements
25 having over \$16 billion in total assets, with over \$15.9 billion in assets held by APS.

26 16. Defendant Don Brandt ("Brandt") is the Chairman of the Board, President and
27 Chief Executive Officer of Pinnacle West, and he is also the President and Chairman of the
28

1 Board of APS. On information and belief, Mr. Brandt works in Maricopa County, Arizona,
2 and has done so at all times relevant to the claim in this action.

3 17. Defendant Brandt has taken actions in Maricopa County, Arizona from which
4 the allegations of this Complaint arise.

5 18. According to the 2016 Proxy Statement of Pinnacle West, Pinnacle West and
6 APS have adopted incentive plans that provide for Mr. Brandt and other executives of Pinnacle
7 West or APS to achieve substantial annual incentive compensation tied to corporate earnings
8 and/or to target performance levels for various business units of APS. On information and
9 belief, such plans provide personal incentives to Pinnacle West and APS executives to increase
10 earnings of the APS regulated monopoly.

11 19. Judging by the placement of its logos and name on such items as buildings,
12 announcements, programs, trash cans, signs and other locations, APS is one of the largest
13 supporters of public events in Arizona. On information and belief, Pinnacle West contends
14 that the monies used to create such an impression are from Pinnacle West and not from APS.
15 Even if that is true, the clear intent of the donations is to create the public impression that APS
16 has provided substantial backing to charitable or civic events.

17 20. On information and belief, the contributions made to create public credit through
18 perceptions of financial support by APS can or have been used by Defendants APS and
19 Pinnacle West as a tool to engender and leverage political support and lobbying-type efforts in
20 support of APS's and Pinnacle West's financial or political objections and interests.

21 21. According to the statement of Defendant Don Brandt given to Pinnacle West
22 shareholders on May 20, 2015, APS made in the prior year "\$10 million in APS charitable
23 contributions".

24 22. On information and belief, Pinnacle West and APS also make much of their
25 financial contributions to charitable organizations or other groups or events through Pinnacle
26 West. Also on information and belief, APS does not report contributions made by Pinnacle
27 West for support of charitable organizations or public events to the Arizona Corporation
28 Commission, even where such contributions result in sponsorship credit or marketing benefits

1 for APS. Nothing in the law prevents APS or Pinnacle West from reporting or disclosing to
2 the Arizona Corporation Commission the substantial sums paid for support or sponsorship of
3 events, buildings or organizations for which APS is credited as a sponsor or in connection with
4 which the APS name or logo are prominently displayed.

5 23. On information and belief, APS and Pinnacle West spend large sums of money
6 on a regular basis engaging the services of marketing personnel, lobbying personnel, and/or
7 political strategists for the benefit of APS.

8 24. On information and belief, much of the sums paid to support the lobbying,
9 marketing and political activities directly and indirectly benefitting APS are ostensibly paid
10 through Pinnacle West, and the payment of such sums are not therefore reported to the
11 Arizona Corporation Commission by APS.

12 25. On information and belief, nothing in the law prevents APS or Pinnacle West
13 from publicly disclosing, or from reporting to the Arizona Corporation Commission, who is
14 being paid for all lobbying, marketing and political activities benefitting APS, how much they
15 are being paid, and the precise nature of all activity conducted through such arrangements for
16 the benefit of APS.

17 26. In 2014, some person(s) or some entity(ies) made unprecedented financial
18 contributions in support of the election of two Commission candidates through advertising
19 paid for by two 504(c)(4) independent expenditure groups ("IEGs"). On information and
20 belief, the independent expenditure groups were Save Our State Now and the Arizona Free
21 Enterprise Club. It has been reported that the two IEGs spent some \$3.2 million on advertising
22 related to the 2014 Corporation Commission election.

23 27. Reason exists to believe that the unprecedented level of spending in support of
24 Commission races was materially facilitated by contributions from, or facilitated by, Pinnacle
25 West. For instance, in his address before the Thirtieth Annual Meeting of Shareholders of
26 Pinnacle West on May 20, 2015, which address Pinnacle West put in writing, Defendant
27 Brandt made the following statements:

28 In 2014, the solar leasing companies went a step further, supporting two
candidates for the Arizona Corporation Commission on an explicitly anti-APS

1 platform. *This caused us to reevaluate how to ensure the interests of APS*
2 *customers, employees, communities and shareholders are represented in the*
3 *political process.*

4 Whenever we make the decision to support a candidate or cause, we follow the
5 laws regarding campaign contributions and disclosure.

6 (Emphasis added). Defendant Brandt's comments indicated Pinnacle West and APS
7 executives did at times take actions supporting particular candidates or political causes, and
8 that they considered the need to become directly engaged in the 2014 Commission election to
9 combat campaign support purportedly being provided by solar leasing industry companies.

10 28. On information and belief, Pinnacle West and APS have not publicly and clearly
11 admitted that their executives or monies had anything to do with the 2014 independent
12 expenditure group spending on Commission races. Rather, the Defendants contend that they
13 have no obligation to answer to the Corporation Commission whether they were involved with
14 those expenditures.

15 29. However, members of the press and constituents of Commissioner Burns have
16 raised substantial concerns that Pinnacle West and/or APS were meddling in the 2014
17 campaign in support of candidates they preferred. On information and belief, substantial
18 concerns have been raised in press reports that such contributions would create undue
19 influence over the Commissioners elected with the independent expenditure groups' backing.

20 30. Even the appearance that Pinnacle West or APS executives have thrown material
21 financial support behind a candidate for a Commission seat can be disruptive, can bring
22 disrepute on the Commission, makes the public question the integrity of the Commission and
23 the Commissioners, makes Arizona consumers, including those impacted by APS's service
24 rates, question whether the rate-setting and other regulatory determinations of the Corporation
25 Commission are made with appropriate objectivity and independence and focus on the
26 consumer, and can undermine the operations of the Commission seeking to protect the interest
27 of consumers.

28 31. On information and belief, Pinnacle West and/or APS executives intend to
continue making political contributions, charitable contributions, and other payments or

1 contributions that can be used to influence and/or provide material financial support to
2 Commission candidates, Commissioners, or those close to them.

3 32. In fact, Pinnacle West has published a current public pronouncement of its
4 political participation policies. As of January, 2017, Pinnacle West has published at
5 [http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-](http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-Policy/default.aspx)
6 [Policy/default.aspx](http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-Policy/default.aspx) a Political Participation Policy. On information and belief, the Political
7 Participation Policy is intended to cover political contributions and support by or for the
8 benefit of APS as well as Pinnacle West.

9 33. The APS and Pinnacle West Policy expressly acknowledges: 1) “Because
10 Pinnacle West and APS participate in a wide range of business activities to fulfill this
11 responsibility [to “provide customers in our service territory with safe, reliable and affordable
12 electricity”], policy decisions at the federal, state and local levels can have profound impacts
13 on virtually all aspects of our business”; and 2) “[w]e have a responsibility to our customers,
14 communities and shareholders to participate in the political process, when appropriate, so that
15 our perspectives are heard and so that we can develop productive working relationships with
16 governmental decision-makers.”

17 34. The Policy further states that Pinnacle West is committed to “corporate
18 citizenship” activities which include “sponsoring a political action committee and, where
19 permitted by law, considering the contribution of corporate funds to political candidates,
20 political parties, political action committees, and organizations that engage in political
21 activities”, and that such activities “may also include independent expenditures, or the
22 sponsoring of a political action committee that engages in independent expenditures, in
23 relation to the elections of candidates to office, get-out-the-vote efforts, and ballot initiatives
24 and referenda.”

25 35. The Political Participation Policy further states:

26 In addition, we actively promote the economic health of the jurisdictions we serve
27 through our activities with chambers of commerce. Pinnacle West supports many
28 charitable and non-profit organizations that support a variety of community and
educational endeavors. These organizations, in turn, are at times actively involved
in promoting social welfare missions to our elected leaders. Depending on their

1 roles, any of these organizations may be subject to lobbyist registration and
2 disclosure reporting obligations, with their reports made public by federal and
3 state agencies overseeing lobbying activities.

4 36. The Political Participation Policy further establishes a Pinnacle West Political
5 Action Committee, describes its operations, and further expresses that all “[c]orporate
6 contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice
7 President, State and Local Affairs, who “typically receive input from other members of our
8 senior management team, including our Chief Executive Officer [Defendant Brandt].”

9 37. Thus, APS and Pinnacle West have admitted that decisions made by ACC
10 Commissioners, as key governmental decision-makers, can have “profound impacts” on APS’s
11 business operations. They have further admitted that they intend to create relationships of
12 influence through participation in the political process. Some actions could include potentially
13 making financial contributions in support of or benefitting candidates for Commission seats.
14 On information and belief, all such activities are intended to promote the business interests of
15 APS and Pinnacle West, including further enhancing the income of executives of the two
16 companies, and increasing net revenues and income.

17 38. APS and Pinnacle West have also admitted that Pinnacle West intends to keep
18 making contributions in support of “charitable and non-profit organizations” who may be
19 subject to lobbyist registration and who can promote “social welfare missions” to
20 Commissioners or other elected leaders.

21 39. APS and Pinnacle West have also through the Political Action Policy admitted
22 that Defendant Brandt and other senior executives of the companies play a direct role in
23 helping determine how Pinnacle West funds are distributed to politically-related activities that
24 could be used to influence a Commissioner, Commission candidate or Commission staff.

25 40. Without open and detailed disclosure concerning the contributions and payments
26 made by or for the benefit or financial well-being of APS, including all those contributions
27 ostensibly made through Pinnacle West, and without a detailed exposure of the process by
28 which such contributions and payments are made, or by which Pinnacle West and APS may
threaten to end such support, it is impossible for the elected Commissioners and their staff to

1 assess whether APS and Pinnacle West are properly categorizing such payments or
2 contributions as non-APS monies. It is also impossible for the elected Commissioners and
3 their staff to assess if such payments or contributions contribute to or impact service rates
4 passed on to APS customers, and whether further rules or regulations in connection with such
5 payments or contributions could result in a reduction of consumer electric service rates, a
6 reduction in economic pressures for APS and Pinnacle West to try and increase rates, or other
7 positive economic outcomes for APS customers.

8 41. For instance, given the pressures on APS and Pinnacle West executives to
9 increase both their own personal income, as well as income per share and other economic
10 performance aspects of APS and Pinnacle West, it is possible that the reduction of millions of
11 dollars in ostensible charitable contributions, marketing costs, lobbying costs, campaign
12 support or other political activity costs, even on the Pinnacle West budget, would encourage or
13 allow APS and Pinnacle West executives to develop greater efficiencies in delivery of service
14 and reduce costs to customers without sacrificing their desired financial performance. Without
15 full and detailed disclosure regarding the types of financial contributions and payments
16 referenced above, the Commissioners and their staff cannot identify and work to implement
17 such potentially critical cost saving regulations benefitting Arizona consumers.

18 42. Moreover, without full, timely and detailed disclosures by APS and Pinnacle
19 West of the types of contributions and payments referenced above, the Corporation
20 Commission and its individual Commissioners are robbed of their ability to inform Arizona
21 consumers and stakeholders who can in turn use such information to advocate for themselves
22 with Commissioners, Commission staff or even APS or Pinnacle West officials in an effort to
23 reduce overall costs to consumers. Thus, the refusal of APS and Pinnacle West to provide
24 such full, timely and detailed disclosures are negatively impacting Commissioner Burns'
25 ability to inform constituents in the manner to which they are entitled and to provide them the
26 type of information Arizona's constitutional framers expected could be made available to them
27 to protect them against undue corporate utility influence in the rate setting and utility delivery
28

1 process, waste of resources driving costs to consumers higher, and even forced political
2 speech.

3 43. Given Pinnacle West's and APS's admissions that most all of Pinnacle West's
4 business revenue and income comes from fees collected by APS from its Arizona customers,
5 the amounts being used by Pinnacle West and/or APS to make political, charitable, lobbying,
6 marketing or other similar contributions or payments as outline above are initially generated as
7 fees from APS customers. These facts create a material risk that APS and Pinnacle West have
8 or will enlist the assistance or compliance by the Corporation Commission in compelled
9 political speech in violation of the federal and state constitutions.

10 44. If, for example, APS insists on particular expense calculations or income targets
11 as part of its rate applications knowing or desiring particular levels of revenues or income for
12 use in political, lobbying, campaign, charitable or marketing type activities as described above,
13 then the rates being charged to APS customers may be set, in part, based on the need to and
14 plan to fund particular political speech selected and targeted by the executives of APS and
15 Pinnacle West. These circumstances create a real and palpable risk that the Commissioners
16 will, knowingly or unknowingly, impose costs on customers that are intended to support the
17 political speech activities of APS and Pinnacle West, including speech that the customers may
18 not agree with. Such compelled speech could result in violations of the constitutional rights of
19 Arizona consumers whose rights the Commissioners are elected and sworn to protect.

20 45. The Commissioners are unable to assess the risks of such compelled political
21 speech without full, timely and detailed disclosures of what contributions and payments APS
22 or Pinnacle West make, how such contributions are planned, determined and made, and how
23 those contributions and payments impact the amounts sought by APS in ratemaking or rate
24 adjustment proceedings before the Corporation Commission.

25 46. Without such full, timely and detailed disclosures the Commissioner are also
26 unable to assess, evaluate, and structure rate making procedures, standards or rules that are
27 needed to eliminate the risk of compelled political speech for Arizona's utility consumers.
28

1 47. Without such full, timely and detailed disclosures to the Commissioners, the
2 Commissioners are unable to provide the type of detailed information needed by Arizona
3 utility consumers to enable such consumers to advocate for themselves, challenge
4 circumstances that threaten to violate their constitutional rights against compelled political
5 speech, and promote the adoption of appropriate procedures, standards or rules to prevent such
6 violations of their rights.

7 **Commissioner Burns' Authorities as a Commissioner**
8 **of the Arizona Corporation Commission**

9 48. The Arizona Corporation Commission is Arizona's unique fourth branch of state
10 government, whose elected members are delegated and imbued with a unique combination of
11 Arizona's sovereign executive, legislative and judicial powers. *See, e.g.* Ariz.Const., art. XV,
12 §§ 3-5, 13-14, 17, 19; *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 305, 138 P.
13 781, 785 (1914) ("The functions of the Corporation Commission are not confined to any of the
14 three departments named [legislative, executive and judicial branches], but its duties and
15 powers pervade them all . . ."); *see Ariz. Corp. Comm'n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290-
16 291, 830 P.2d 807, 811-812 (1992) ("*Woods*"); *Arizona Corporation Commission v. Superior*
17 *Court*, 105 Ariz. 56, 459 P.2d 489 (1969); *Selective Life Insurance Co. v. Equitable Life*
18 *Assurance Society*, 101 Ariz. 594, 422 P.2d 710 (1967).

19 49. The powers vested by Arizona's framers in the Arizona Corporation
20 Commission are, at least in part, "supreme" and may not be invaded by the other branches of
21 government. *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 306 ("While [the
22 Commission] is not so named, it is, in fact, another department of government, with powers
23 and duties as well defined as any branch of the government, and where it is given exclusive
24 power it is supreme. Its exclusive field may not be invaded by either the courts, the legislative
25 or executive.")

26 50. The Arizona Corporation Commission is one of only a relatively few such state
27 entities created by constitutional command, and only one of a minority of such state entities
28 with elected commissioners. This unique history and make-up presents the opportunity for the

1 robust, independent decision-making intended by Arizona's constitutional framers. Unlike
2 executive officers appointed or hired by the Governor or the agencies the Governor oversees,
3 the Commissioners are directly elected and accountable to the voters of Arizona.

4 51. According to the legislative history of the Arizona Constitutional Convention,
5 the Arizona Corporation Commission was created to overcome the paralyzing influence large
6 corporations had already proven adept at wielding in traditional legislative and judicial
7 arrangements.

8 52. To overcome recognized issues with corporate influence and insulation, the
9 Arizona framers created an entirely separate branch of state government "vested with broad
10 powers to regulate the activities of 'public service corporations,' defined to include private
11 utilities and common carriers." Leshy, *Making of the Arizona Constitution, supra*, at 88;
12 Ariz.Const., art. XV. The position occupied by Commissioner Burns is therefore part of the
13 Arizona constitutional regulatory check on the powers of corporations, particularly regulated
14 monopoly utilities.

15 53. The Arizona framers also intended that the Commissioners provide a uniquely
16 protective form of governmental machinery assigned powers "primarily for the interest of the
17 consumer." *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308, 138 P. at 786.

18 54. According to the Supreme Court of the State of Arizona: "The founders
19 expected the Commission to provide both effective regulation of public service corporations
20 and consumer protection against overreaching by those corporations. *Constitutional*
21 *Convention, supra*, at 612-15, 967-81; Engelby, *supra*, 20 Ariz.St.L.J. at 242-43. The
22 progressive and labor forces, two strong ideological influences at the constitutional
23 convention, combined to promote strong commission authority to regulate corporations,
24 although the strongest power ultimately was limited to regulation of public service
25 corporations [like APS]." *Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing Leshy,
26 *Making of the Arizona Constitution, supra*, at 88; *APS II*, 157 Ariz. at 535, 760 P.2d at 535
27 (citing and quoting Gordon Morris Bakken, *The Arizona Constitutional Convention of 1910*,
28 1978 Ariz.St.L.J. 1, 15 (1978))).

1 55. The Supreme Court of the State of Arizona has further held that the language of
2 Arizona's Constitution at Article XV, § 3, establishing the broad powers of the Commission
3 "were designed to promote both democratic control and competitive economic forces." *Woods*, 171
4 Ariz. at 291, 830 P.2d at 811 (citing Leshy, *Making of the Arizona Constitution*, *supra*, at 89-90).

5 56. Arizona voters have protected the independence of the Commission -- especially
6 its provisions regarding election of commissioners -- from constitutional amendment on
7 numerous occasions. *See Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing John D. Leshy,
8 *The Arizona State Constitution: A Reference Guide* (prepublication manuscript 1991), at 629)).

9 57. The relationship between the Arizona Corporation Commission and APS
10 includes APS's status as a regulated monopoly under which it has contracted to make adequate
11 investment and render competent and adequate service in the public interest, and to subject
12 itself to the regulatory powers and directives of the Arizona Corporation Commission, in
13 return for a privilege of monopoly against other private utilities.

14 58. The Arizona Constitution at Article XV, § 3 provides, in pertinent part:

15 The corporation commission shall have full power to, and shall, prescribe just and
16 reasonable classifications to be used and just and reasonable rates and charges to be
17 made and collected, by public service corporations within the state for service rendered
18 therein, and make reasonable rules, regulations, and orders, by which such corporations
19 shall be governed in the transaction of business within the state, and may prescribe the
20 forms of contracts and the systems of keeping accounts to be used by such corporations
21 in transacting such business, and make and enforce reasonable rules, regulations, and
22 orders for the convenience, comfort, and safety, and the preservation of the health, of
23 the employees and patrons of such corporations;

24 59. Thus, one of the express constitutional powers of the Arizona Corporation
25 Commission is the setting of rates and charges to be made and collected by APS.

26 60. Additional express constitutional powers of the Arizona Corporation
27 Commission include the making of reasonable rules, regulations and orders by which APS
28 shall be governed in the transaction of its Arizona business, and the making and enforcement
of reasonable rules, regulations and orders for the convenience, comfort, safety and health of
the customers of APS. *See Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (1992) (citing
Deborah Scott Engelby, Comment, *The Corporation Commission: Preserving its Independence*, 20

1 Ariz.St.L.J. 241, 244-48 (1988); *Records of the Arizona Constitutional Convention of 1910*, at 967-81
2 (John S. Goff ed., 1991)).

3 61. The Arizona framers also clothed the Commissioners with full power to
4 investigate, hear and determine disputes and controversies between public utility companies
5 and the general public, and established constitutional expectations that the Commissioners
6 would behave as trained, capable and conscientious commissioners, act reasonably in light of
7 the facts and issues presented to them, and be unbiased, objective and accountable to the voters
8 who elect them and the consumers they primarily serve, with no member subject to corporate
9 influences that might alter them from a pure focus on ascertaining the truth and facts of a
10 matter within their jurisdiction. *See, e.g., Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at
11 305-306, 138 P. 785-786.

12 62. To carry out their constitutionally delegated powers, the Arizona Constitution
13 expressly vests each Commissioner with powers to inspect and investigate properties, books,
14 papers, businesses, methods, and affairs of any public service corporation. The Arizona
15 Constitution states, at Article XV, § 4:

16 The corporation commission, *and the several members thereof*, shall have
17 power to inspect and investigate the property, books, papers, business,
18 methods, and affairs of any corporation whose stock shall be offered for
19 sale to the public and of any public service corporation doing business
20 within the state, and for the purpose of the commission, *and of the several*
21 *members thereof*, shall have the power of a court of general jurisdiction to
enforce the attendance of witnesses and the production of evidence by
subpoena, attachment, and punishment, which said power shall extend
throughout the state. Said commission shall have power to take testimony
under commission or deposition either within or without the state.

22 (Emphasis added).

23 63. The Arizona statutes expressly acknowledge Commissioner Burns' authority to
24 conduct inspections of the accounts, books, papers and documents of any public service
25 corporation, and to examine under oath any officer, agent or employee of such corporations in
26 relation to the business and affairs of the corporation. A.R.S. § 40-421(A).

1 64. Under Arizona law, the investigatory powers of administrative agencies and their
2 officers are analogous in their breadth to those of the grand jury. *See Shelby Sch. v. Ariz. State*
3 *Bd. of Educ.*, 192 Ariz. 156, 169, ¶ 62 (App. 1998).

4 65. The Arizona courts give Corporation Commission investigations ‘wide berth.’”
5 *Carrington v. Ariz. Corp. Comm.*, 199 Ariz. 303, 305, ¶ 8 (App. 2000) (quoting *Polaris Int’l*
6 *Metals Corp. v. Arizona Corp. Comm’n*, 133 Ariz. 500, 506 (1982)). They further hold that the
7 Commission must be free without undue interference or delay to conduct an investigation
8 which will adequately develop a factual basis for a determination as to whether particular
9 activities come within the Commission's regulatory authority. *Id.*

10 **The Commissioner’s Interest in Developing** 11 **Transparency and Disclosure Rules**

12 66. Commentators and government scholars have recognized that direct election of
13 corporation commission officers also creates the dangerous potential for regulatory “capture”
14 or undue influence whereby regulated monopoly utilities or other stakeholders with business
15 impacted by the commission may spend monies to create direct or indirect benefits for
16 candidates for such offices or sitting commissioners. This danger extends to regulated
17 monopoly utilities or other interested parties spending their monies to create influence with or
18 over commission candidates or elected officials by supporting positions, causes, events or
19 operations with which a commissioner or their family or close associates are affiliated.

20 67. When regulated monopoly utilities or other stakeholders having business before
21 the Commission or interests in Arizona Corporation Commission proceedings can spend
22 monies without public disclosure or scrutiny to create the types of influence or capture of
23 candidates, Commissioners, or key agency staff discussed in the preceding paragraph, then the
24 public impacted by Commission decisions can be misled into falsely believing that
25 Commission decisions are being made with the objectivity and independence expected of the
26 Commissioners by the public they serve.

27 68. Moreover, the Arizona citizens’ constitutional objectives for objectivity and
28 independence among Commissioners and their staff can be compromised, and the traditional

1 countermeasures for such influence – the press, public comment, and exposure and debate in
2 campaign efforts, Commissioner communications with the public, and in connection with
3 proceedings before the Commission can be nullified. Undisclosed influence over
4 Commissioners, Commission candidates, or Commission staff undermines the constitutional
5 objectives and purposes of the Arizona Corporation Commission and denies the citizens of
6 Arizona the protections and government services they created.

7 69. Arizona’s constitutional history encourages new answers to problems, and the
8 very structure and purpose of the Arizona Corporation Commission represented a bold,
9 innovative solution to issues of corruption, legislative and judicial intransigence, and consumer
10 exclusion that had plagued traditional governmental forms. Yet, the financial resources of
11 today’s regulated monopolies and other interested corporate players can exploit vast, new
12 loopholes that undermine the objectivity, independence, transparency and consumer focus
13 constitutionally expected of Arizona Corporation Commission Commissioners and the
14 Commission’s staff.

15 70. The spirit of innovation and improvement that motivated the creation of
16 Arizona’s fourth branch of government justifies the Commissioners maintaining constant
17 vigilance against threats of the exercise of undisclosed influence by regulated monopoly
18 utilities or others interested in the outcome of Commission business, and further justifies their
19 careful and educated consideration of all available alternatives to guard the objectivity and
20 independence that Arizona’s constitutional framers expected, and that its current citizens
21 deserve.

22 71. Longstanding legal standards and the political and economic policy sentiments
23 embedded in Arizona’s Constitution support robust transparency and disclosure (“T&D”)
24 measures to ensure properly informed decision-making by regulators, consumers, intervenors,
25 competitors, stakeholders, and even regulated corporate executives, boards, shareholders and
26 investors.

27 72. Given its unique position as a fourth branch of state government with designated
28 executive, legislative and judicial powers, there are certain responsibilities and authorities and

1 operations of the Arizona Corporation Commission and its individual Commissioners that are
2 exclusive to the Commission and the office held by Commissioner Burns. As such, judicial
3 intervention in such matters is barred by doctrines of separation of powers and concerning
4 non-justiciable political questions established by the Constitution and law of the State of
5 Arizona. One of those areas is the selection of what types or terms of T&D rules and
6 regulations are best suited for or most appropriate in the case of Arizona's regulated
7 monopolies like APS.

8 73. As noted above, transparency, objectivity, and accountability to Arizona's utility
9 consumers and an absence of influence by corporations affected by their decisions are
10 hallmark expectations for the Arizona Corporation Commission's Commissioners under the
11 Arizona Constitution and law. Such transparency and objectivity is especially appropriate,
12 necessary and demanded in the case of regulated monopolies like APS and their affiliate
13 corporations like Pinnacle West because customers of the regulated monopoly do not have any
14 choice in selecting their general electric service provider. Determining and implementing the
15 proper policies, practices, rules, standards and procedures to ensure the Commission and its
16 Commissioners meet these constitutional standards is an exclusive constitutional responsibility
17 and authority of the Commissioners.

18 74. Thus, one of the areas in which Commissioner Burns' elected office is granted
19 authorities under the Constitution and laws of the State of Arizona, including Ariz.Const., art.
20 XV, is the investigation of operations and financial dealings and arrangement of regulated
21 monopoly utilities and their affiliated companies and organizations that may create
22 opportunities for direct or indirect financial or political influence over Commissioners,
23 candidates for Commissioner seats, Arizona Corporation Commission staff, or the family or
24 close associates of any such persons.

25 75. Another related area of authority delegated to Commissioner Burns under the
26 Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, is the study,
27 determination, structuring and proposal of policies, practices, rules and procedures regarding
28 transparency and disclosure of financial contributions, expenditures, or benefits to be followed

1 by the Commission and its staff, Commissioners, candidates for Commissioner seats, regulated
2 monopoly utilities and their affiliated organizations or companies, and intervenors in
3 Commission proceedings.

4 76. Commissioner Burns is entitled to invoke and utilize his individual authorities as
5 a Commissioner, including those recognized under Ariz.Const. art. XV, § 4 and A.R.S. § 40-
6 421(A), to conduct an inspection and investigation into the property, books, papers, records,
7 business, methods and affairs of the Defendant corporations to address transparency and
8 disclosure issues and to help identify and develop the scope and terms of transparency and
9 disclosure rules for regulated monopoly utilities and their affiliated entities, as well as
10 intervenors and other stakeholders in Arizona Corporation Commission proceedings.

11 **The Commissioner's Interests in Addressing Service Rates, Financial Strength and**
12 **Stability of Regulated Monopolies and Protections for Public Health and Safety**

13 77. In addition to his individual authority as a Commissioner to conduct
14 investigations and inspections concerning the business and affairs of any public service
15 corporation and its affiliates for purposes of identifying T&D issues and developing T&D
16 rules, Commissioner Burns has delegated powers pursuant to the Constitution and laws of the
17 State of Arizona, including without limitation Ariz.Const., art. XV and A.R.S. § 40-241, to
18 require reporting and conduct inspections of records of any public service corporation,
19 including APS, and its affiliates, including Pinnacle West, in connection with ratemaking
20 issues and proceedings.

21 78. For instance, Commissioner Burns has specifically delegated powers pursuant to
22 the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, § 3 to initiate
23 and participate in proceedings, including investigations and studies, addressing ratemaking for
24 Arizona's monopoly utilities, including APS.

25 79. The Supreme Court of the State of Arizona has already held that: "the
26 Commission's regulatory power permits it to require information regarding, *and* approval of,
27 all transactions between a public service corporation and its affiliates that may significantly
28 affect economic stability and thus impact the rates charged by a public service corporation."

1 *Woods*, 171 Ariz. at 295, 830 P.2d at 816. Thus, the Commission and its members have
2 express powers to investigate relationships between APS and its affiliates, including Pinnacle
3 West, that could affect the economic stability of APS.

4 80. There exist substantial reasons to believe that the contribution or payments by
5 Pinnacle West or APS of funds to support election campaigns or to fund or support charitable
6 organizations, groups, or activities or events with which a Commissioner, a Commission
7 candidate, or a key Commission staff member, or their family or close associates, may be
8 involved or interested creates material risks of economic instability.

9 81. By way of example, Pinnacle West has reported in its 2016 SEC Form 10-K, the
10 following:

11 Pinnacle West has received grand jury subpoenas issued in connection with an
12 investigation by the office of the United States Attorney for the District of
13 Arizona. The subpoenas seek information principally pertaining to the 2014
14 statewide general election races in Arizona for Secretary of State and for positions
15 on the ACC. The subpoenas request records involving certain Pinnacle West
16 officers and employees, including the Company's Chief Executive Officer
[Defendant Brandt], as well as communications between Pinnacle West personnel
and a former ACC Commissioner. Pinnacle West is cooperating fully with the
United States Attorney's office in this matter.

17 To the extent that contributions by Pinnacle West or APS to, or in relation with, any statewide
18 elections, particularly for Arizona Corporation Commission seats, implicates criminal
19 wrongdoing, or even pulls APS and Pinnacle West's chief executive into a criminal
20 investigation, such activity threatens to severely disrupt operations at APS. Such disruptions
21 can include the devotion of substantial executive time, worry and resources defending against
22 a criminal investigation, or the disruptions that would obviously occur in management should
23 such investigation result in criminal prosecution, and especially conviction, of any shared APS
or Pinnacle West executives.

24 82. Similar risks to corporate operations and economic stability are posed should
25 other improper or even questionable contributions by or for APS come to light, such as
26 charitable or event promotion contributions that are used to curry or leverage political favors
27 and lobbying, or that are used to directly or indirectly influence the actions of a Commissioner
28

1 or key staff member. The public backlash, harm to employee morale, loss of key personnel,
2 reallocation of resources to defensive measures, and any associated criminal or civil
3 prosecution related to such activities could materially impact the operations and stability of
4 Pinnacle West and APS.

5 83. Threats or risks of disruption of executive management, diversion of material
6 economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle
7 West or their executives or agents threaten to undermine the compliance by APS with best
8 practices and regulatory requirements for public health and safety, and for the health and
9 safety of APS's own employees and contractors.

10 84. Threats or risks of disruption of executive management, diversion of material
11 economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle
12 West or their executives or agents further threaten to increase economic pressures and
13 requirements for APS and Pinnacle West and thereby motivate requests and activities designed
14 to increase APS service rates and thereby increase costs of service to Arizona consumers.

15 85. As noted in allegations set forth above, there exist substantial reasons to believe
16 the contributions or payments by Pinnacle West or APS of funds to support lobbying or
17 marketing campaigns designed to target, leverage or influence Commissioners, Commission
18 candidates or key Commission staff increase the overall expenses of operations for APS and
19 Pinnacle West, threaten to negatively impact executive compensation and publicly reported
20 economic performance of APS and Pinnacle West, eliminate incentives and financial abilities
21 to decrease or curb rate-driving dynamics, and create risks that APS will push for expense
22 calculations or other income figures during rate setting proceedings that inflict unnecessary
23 costs on their customers.

24 86. As noted in allegations set forth above, there also exist substantial reasons for
25 concern that contributions or payments by Pinnacle West or APS of funds to support lobbying
26 or marketing campaigns, political campaigns or activities designed to target, leverage or
27 influence Commissioners, Commission candidates, key Commission staff or other
28 governmental officials create material risks that the Commission will, through the rate-setting

1 process, may impose compelled speech on APS consumers in violation of their constitutional
2 rights.

3 87. Consequently, issues related to the use of funds by APS and/or Pinnacle West to
4 create influence over, or to leverage the lobbying of, Commissioners, Commission candidates,
5 or key Commission staff are fundamentally tied to multiple matters within the exclusive
6 authority and legitimate constitutional and statutory concerns of the Commission and its
7 Commissioners.

8 88. Commissioner Burns is delegated powers pursuant to the Constitution and laws
9 of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order and to
10 inspect the accounts, books, papers and documents of a public service corporation or its
11 affiliates, which in this case include APS and Pinnacle West, in connection with ratemaking
12 proceedings. Commissioner Burns is also delegated powers pursuant to the Constitution and
13 laws of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order the
14 appearance and take the testimony of officers of public service corporations, including APS, in
15 relation to the public service corporation's business and affairs.

16 89. Given the allegations set forth above, the inspections, testimony and
17 investigations Commissioner Burns is authorized to initiate and compel necessarily include
18 obtaining records, evidence and testimony related to the types of contributions and payments
19 by APS and Pinnacle West discussed above.

20 90. Commissioner Burns' rights and authorities as set forth in this Complaint are
21 individual rights and authorities and do not require the cooperation, acquiescence, compliance
22 or authorization of any other Commissioners or the Commission as a whole. The other
23 Commissioners have no legal authority to stop or limit the investigation, inspection of records
24 and taking of testimony initiated by Commissioner Burns on such topics.

25 **Commissioner Burns' Subpoenas to the APS Parties**

26 91. On August 25, 2016, Commissioner Burns issued two subpoenas in accordance
27 with his constitutional and statutory authorities. The first was to Defendant APS and
28 Defendant Brandt in his capacity as Chairman, President and Chief Executive Officer of APS

1 and/or Pinnacle West, and the second was to Pinnacle West and Defendant Brandt in his
2 capacity as Chairman, President and Chief Executive Officer of APS and/or Pinnacle West. A
3 true and correct copy of the subpoenas is attached to this Complaint as Exhibit 1.

4 92. The subpoenas sought production of documents, answers to written questions,
5 and to compel testimony by Defendant Brandt and others with relevant knowledge concerning
6 the subjects listed within the subpoenas.

7 93. Commissioner Burns originally filed the subpoenas in an administrative
8 ratemaking docket for APS at the Corporation Commission.

9 94. The subpoenas issued by Commissioner Burns to APS and Pinnacle West and
10 Mr. Brandt were and remain appropriate and lawful and authorized as part of the ratemaking
11 process pending before the Commission involving APS. Commissioner Burns was not
12 required to obtain or maintain authorization for such subpoenas from any other Commissioner
13 or the Commission as a whole.

14 95. APS and Pinnacle West have no legal rights to object to or to refuse to comply
15 with the subpoenas that are the subject of this action.

16 96. Yet, APS only partly complied with the subpoenas, and the Defendants have
17 refused to comply with the remainder of the subpoenas. They have also refused and will
18 continue to refuse to make Defendant Brandt or any other witness available to testify as
19 commanded by the subpoenas.

20 97. Instead, APS and Pinnacle West filed an earlier special action and declaratory
21 judgment proceeding in this Court seeking relief stopping Commissioner Burns from
22 enforcing the subpoenas against them and Defendant Brandt. That action was assigned case
23 number CV2016-014895.

24 98. In that action, APS and Pinnacle West challenged Commissioner Burns'
25 authority as an individual Commissioner to issue the subpoenas, and challenged the subpoenas
26 as a violation of APS's and Pinnacle West's First Amendment rights under the United States
27 Constitution. Those challenges were never decided, and on March 8, 2017, APS and Pinnacle
28 West voluntarily withdrew that action.

1 99. Since the filing of the earlier action, Commissioner Burns has continued his
2 investigation into expenditures, or potential expenditure activities, by Arizona Corporation
3 Commission-regulated entities, intervenors or other interested parties that may create
4 opportunities for influence over individual Commissioners or key Commission staff, including
5 those expenditures that may allow a regulated entity like APS and its parent organization to
6 directly or indirectly influence action or votes by support of campaign activities, charitable or
7 other civic functions, or deceptive lobbying practices.

8 100. On February 7, 2017, Commissioner Burns filed and initiated a new
9 administrative proceeding, identified with Docket No. RU-00000A-17-0035 (the "New
10 Docket") before the Arizona Corporation Commission. The processing is aimed at
11 investigation into the facts surrounding opportunities for undisclosed influence of
12 Commissioners, Commission candidates or Commission staff through financial expenditures
13 or benefits made or extended by regulated monopoly utilities, intervenors in Commission
14 proceedings, and other stakeholders in Commission business and development of appropriate
15 new transparency and disclosure policies and/or rules addressing such issues.

16 101. Commissioner Burns has dually filed the subpoenas that are the subject of this
17 action in the New Docket and has advised APS and Pinnacle West through correspondence by
18 his counsel, that he requires full cooperation and compliance by APS, Pinnacle West, and any
19 deponent required thereby, with the subpoenas in the New Docket. A true and correct copy of
20 the notice to the corporate Defendants' counsel, along with attachments that display the
21 materials filed by Commissioner Burns to open the New Docket, are attached hereto as Exhibit
22 2.

23 102. Commissioner Burns has issued through various means, including messages
24 communicated through the Commission e-Docket and by posting on his webpage at the
25 Commission, communications inviting input by regulated monopolies, intervenors and other
26 Commission stakeholders in connection with the subjects addressed in the New Docket, and
27 has asked for initial submissions to be made by March 3, 2017.
28

1 103. Commissioner Burns has scheduled a publicly noticed workshop to occur in the
2 New Docket on March 23, 2017, at which time he intends to discuss information, materials
3 and comments received in response to the New Docket announcement and call for submission
4 of comments and information. He also intends at that time to take testimony from relevant
5 individuals with knowledge, information or expertise concerning the transparency and
6 disclosure issues that are the subject of the New Docket.

7 104. Commissioner Burns intends to and needs to use the information subpoenaed
8 from APS and Pinnacle West for, among other appropriate and authorized activities of his
9 office, the investigation and rule development contemplated by the New Docket.

10 105. The subpoenas issued by Commissioner Burns that are the subject of the APS
11 Parties' claims were and remain appropriate and lawful and authorized as part of the
12 proceedings in the New Docket. Commissioner Burns was not required to obtain or maintain
13 authorization for such subpoenas from any other Commissioner or the Commission as a whole
14 to file and enforce them in connection with the New Docket.

15 106. The Defendants have no legal right to object to or refuse to comply fully and
16 timely with the subpoenas in connection with the New Docket proceedings. Their refusal to
17 do so will materially and adversely impact Commissioner Burns' ability to carry out his lawful
18 and constitutionally authorized responsibilities in connection with the New Docket issues and
19 all other issues identified above.

20 107. On or about March 6, 2017, Commissioner Boyd Dunn issued a letter to
21 Commissioner Burns and the other Commissioners concerning proceedings in the New Docket
22 in which he contended that "I believe we should exercise restraint and acknowledge that the
23 pending lawsuit [by APS and Pinnacle West] is the proper place to resolve the legitimacy of
24 the subpoena [sic] and the scope of the Commission's authority to require disclosure of
25 Contributions under Arizona law." A true and correct copy of Commissioner Dunn's letter is
26 attached hereto as Exhibit 3.

27 108. While Commissioner Burns disagrees with Commissioner Dunn's belief that the
28 Commissioners should not proceed with the New Docket matters at this time, and

1 Commissioner Dunn's position is moot given the voluntary and surprising withdrawal by APS
2 and Pinnacle West of their lawsuit in this Court, the letter provides a second Commissioner's
3 opinion indicating that Commissioner Burns is entitled to have questions concerning his
4 authority to issue and enforce the subpoenas and the Defendants' authority to refuse to fully
5 comply with the subpoenas decided by a declaration from the Arizona courts.

6 **CLAIM FOR DECLARATORY RELIEF**

7 **The Commissioner is Entitled to a Declaratory Judgment**

8 109. The Defendants have indicated through counsel for APS and Pinnacle West that
9 they intend to preserve their objections to and refuse to comply with portions of the subpoenas
10 they previously objected to. A true and correct copy of a letter from such counsel on that point
11 is attached here as Exhibit 4.

12 110. Thus, Commissioner Burns and the Defendants are at an impasse regarding the
13 Defendants' obligations to timely and full comply with the subpoenas and Commissioner
14 Burns' rights and authority to demand such compliance.

15 111. The portions of the subpoenas that the Defendants refuse to comply with seek
16 information, records and testimony that relate to the ratemaking, corporate stability, corporate
17 wrongdoing, health and safety, compelled speech and improper influence issues over which
18 the Commission is authorized and responsible to regulate and for which each individual
19 Commissioner is entitled to conduct an investigation, including examinations of the books,
20 records and agents of the regulated monopoly, APS, and its affiliate, Pinnacle West.

21 112. Without the Court's confirmation that Commissioner Burns is fully authorized to
22 issue and demand full and timely compliance with the subpoenas by APS and Pinnacle West,
23 Commissioner Burns' legal rights and authorities will be denied and the rights of Arizona
24 citizens to the operation of their Corporation Commission in accordance with its constitutional
25 and statutory powers shall be unlawfully impaired.

26 113. The respective rights of a key elected state official and of a regulated monopoly
27 and its affiliates and executives are therefore in dispute and need to be resolved.
28

1 114. Commissioner Burns is therefore entitled, pursuant to the terms of the Arizona
2 Uniform Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.*, to a full and final declaration
3 that he is fully authorized and entitled to demand from the Defendants, individually and
4 collectively, the full and timely compliance with the subpoenas that are the subject of this
5 action, and that he is not required to obtain consent, approval, or authority from any of the
6 other Commissioners to enforce the subpoenas.

7 115. The rights of Commissioner Burns to have the subpoenas fully and timely
8 complied with by the Defendants are a matter of grave statewide importance of a constitutional
9 dimension. Should any of the Defendants indicate in the course of these proceedings that they
10 intend not to fully and timely comply with the subpoenas according to the declaration of this
11 Court, Commissioner Burns is entitled, per the terms of A.R.S. § 12-1838, as otherwise
12 provided by Arizona law, and as necessary for the Court to protect and enforce its jurisdiction,
13 to further relief including any appropriate injunctive orders, contempt rulings or sanctions
14 necessary to compel compliance with the declaration of this Court and the terms of the
15 subpoenas.

16 116. WHEREFORE, Commissioner Burns is entitled to entry of a final judgment in
17 favor of Commissioner Burns and against the APS Parties, on the following terms:

- 18 A. Entering a final declaratory judgment confirming that Commissioner Burns is
19 fully authorized and entitled to demand from the APS Parties, individually and
20 collectively, full and timely compliance with the subpoenas that are the subject
21 of this action, and that he is not required to obtain consent, approval, or authority
22 from any of the other Commissioners to enforce the subpoenas;
- 23 B. Entering whatever injunctive or other relief, including contempt or sanction
24 orders, against the APS Parties compelling their full and timely compliance with
25 the subpoenas may become necessary to enforce the final declaration of the
26 Court;
- 27 C. Awarding Commissioner Burns, if and to the extent authorized by law, his
28 attorneys' fees and costs; and

1 D. Awarding Commissioner Burns all such other relief, at law or in equity, that the
2 Court deems just and proper.
3

4 DATED this 9th day of March, 2017.

5 BASKIN RICHARDS PLC

6 

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EXHIBIT F

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

COMMISSIONER ROBERT BURNS, a
member of the Arizona Corporation
Commission, in his official capacity,

Plaintiff,

v.

ARIZONA PUBLIC SERVICE COMPANY,
an Arizona public service corporation, and
PINNACLE WEST CAPITAL
CORPORATION, an Arizona corporation, and
DONALD BRANDT, an individual,

Defendants.

Case No. CV2017-001831

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO DISMISS**

(Expedited Oral Argument Requested)

(Assigned to the Honorable James T.
Blomo)

Arizona Corporation Commission ("ACC") Commissioner Robert Burns asks the Court to exercise its authority under the Arizona Constitution and the Uniform Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.*, to decide the powers the Arizona Constitution grants him to issue and enforce investigatory subpoenas as part of ACC ratemaking and rulemaking proceedings. [Complaint, at ¶¶'s 5-6, 109-116]. A ripe dispute exists between the parties over Commissioner Burns' constitutional and statutory authority to issue and enforce two subpoenas requiring records and testimony from the Defendants. [See Complaint at ¶¶'s 7-108 and Ex. 4]. And, Arizona precedent provides multiple independent reasons why the

1 discretionary doctrines of primary jurisdiction and exhaustion of remedies cannot apply, such
2 as: 1) the issues presented here fall squarely in the traditional jurisdiction of the courts to
3 interpret constitutional provisions, are not constitutionally delegated exclusively to the ACC,
4 and require no special agency expertise; 2) the issues presented are questions of Commissioner
5 Burns' constitutional jurisdiction; 3) the doctrines limit judicial appeals by parties to an agency
6 proceeding, not the relief requested by an elected member of the agency itself who has
7 individual governmental powers; 4) the administrative process here is, at best, permissive; 5)
8 there is no pending proceeding to exhaust; and 6) the administrative process would be futile.
9 Those doctrines are especially inapplicable because Defendants Arizona Public Service
10 Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West") previously
11 conceded the Court's power to decide these issues without awaiting any administrative ruling,
12 and have just recently reversed course hoping to delay disclosures harmful to APS before it
13 gets its latest round of substantial rate increases pushed through the ACC. The Court should
14 act quickly, just like APS originally said it could, and address Commissioner Burns' claims.

15 **I. Commissioner Burns Seeks a Ruling on the Broad Subpoena Powers Arizona's**
16 **Framers Individually Granted Him in the Arizona Constitution.**

17 Arizona's constitutional framers created the ACC as Arizona's fourth branch of state
18 government, and gave its elected members a unique combination of sovereign executive,
19 legislative and judicial powers. *See, e.g.* Ariz.Const., art. XV, §§ 3-5, 13-14, 17, 19; *State v.*
20 *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 305 (1914) ("The functions of the
21 Corporation Commission are not confined to any of the three departments named [legislative,
22 executive and judicial branches], but its duties and powers pervade them all . . ."); *see Ariz.*
23 *Corp. Comm'n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290-291 (1992) ("*Woods*"). The framers sought
24 to overcome the undue influence large corporations had wielded against consumer interests in
25 traditional legislative and judicial arrangements, and intended that the ACC commissioners
26 provide a uniquely protective form of governmental powers "primarily for the interest of the
27 consumer." *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308, 138 P. at 786; *see also*
28 *Woods*, 171 Ariz. at 291, 830 P.2d at 811.

The framers focused the ACC's regulatory powers principally on preventing corruption

1 and consumer overreaching by “‘public service corporations,’ which include private utilities
2 [like APS] . . .” (citing John D. Leshy, *The Making of the Arizona Constitution*, 20
3 Ariz.St.L.J. 1, 88 (1988); Ariz.Const., art. XV. *Woods*, 171 Ariz. at 290-291. Commissioner
4 Burns’ elected position is therefore part of the intentional Arizona constitutional check on the
5 powers of monopoly utilities like APS.

6 The two principal constitutional powers the Arizona Constitution grants the ACC to
7 counter monopoly overreaching are: 1) the authority to set limited rates that companies like
8 APS can charge consumers; and 2) the authority to set rules and regulations governing the
9 behavior of the utility monopolies. Arizona Constitution at Article XV, § 3 provides:

10 *The corporation commission shall have full power to, and shall, prescribe just*
11 *and reasonable classifications to be used and just and reasonable rates and*
12 *charges to be made and collected, by public service corporations within the state*
13 *for service rendered therein, and make reasonable rules, regulations, and orders,*
14 *by which such corporations shall be governed in the transaction of business*
15 *within the state, . . . and make and enforce reasonable rules, regulations, and*
16 *orders for the convenience, comfort, and safety, and the preservation of the health,*
17 *of the employees and patrons of such corporations;*

18 (emphasis added); *see also Woods*, 171 Ariz. at 290-291.

19 Recognizing that the ACC commissioners would need full disclosure and transparency
20 into monopoly activities to fulfill their rate-setting and rulemaking powers, the Constitution
21 further expressly delegated the commissioners broad investigatory powers, including subpoena
22 and deposition powers. Ariz.Const., art. XV, § 4. The Constitution is clear that these powers
23 are delegated not just to the ACC, but also separately to each of the individual members like
24 Commissioner Burns. The Arizona Constitution states, at Article XV, § 4:

25 *The corporation commission, and the several members thereof, shall have power*
26 *to inspect and investigate the property, books, papers, business, methods, and*
27 *affairs of any corporation whose stock shall be offered for sale to the public and*
28 *of any public service corporation doing business within the state, and for the*
29 *purpose of the commission, and of the several members thereof, shall have the*
30 *power of a court of general jurisdiction to enforce the attendance of witnesses*
31 *and the production of evidence by subpoena, attachment, and punishment, which*
32 *said power shall extend throughout the state. Said commission shall have power to*
33 *take testimony under commission or deposition either within or without the state.*

(emphasis added); *see also* A.R.S. § 40-241 (“each commissioner” may conduct inspections of

1 corporate books or examinations under oath of corporate officials). The Arizona Supreme
2 Court has affirmed that this provision entitles Commissioner Burns not only to investigate the
3 records and operations of APS, but also of its affiliated companies like Pinnacle West. *Woods*,
4 171 Ariz. at 295. Thus, the questions Commissioner Burns raises in his Complaint about a
5 commissioner's power to issue and enforce an investigatory subpoena (*see* Complaint, at ¶¶'s
6 109-116) implicate powers derived directly from the Arizona Constitution that must be
7 answered by interpreting the constitutional framers' intent.

8 **II. The Subpoenas at Issue Seek Evidence at the Heart of a Commissioner's** 9 **Constitutional Responsibilities.**

10 Commissioner Burns' investigatory powers are exceedingly broad.¹ Indeed:

11 . . . courts give the Commission "wide berth" when they review the validity of
12 Commission investigations. [citation omitted]. In fact, "an appropriately
13 empowered agency 'can investigate merely on suspicion that the law is being
14 violated, or even just because it wants assurance that it is not.'" [citations
15 omitted]. In other words, "the Commission must be free without undue
16 interference or delay to conduct an investigation which will adequately develop
17 a factual basis for a determination as to whether particular activities come within
the Commission's regulatory authority." *SEC v. Brigadoon Scotch Distrib. Co.*,
480 F.2d 1047, 1052-53 (2nd Cir. 1973). *See also EEOC v. Kloster Cruise Ltd.*,
939 F.2d 920, 922 (11th Cir. 1991) (court must enforce subpoena if agency
makes plausible assertion of jurisdiction and information sought is not plainly
incompetent or irrelevant to any lawful purpose of the agency).

18 *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 (App. 2000).² As set forth in
19 Commissioner Burns' detailed Complaint, he has multiple reasons to believe that the
20 subpoenas will help him adequately develop a factual basis for determining matters within the
21 ACC's oversight. [*See* Complaint, at ¶¶'s 7-106]. The following summarizes some of them.

22 Commissioner Burns issued the two disputed subpoenas only after concerns
23 crescendoed during the 2014 ACC election that APS was attempting to use the financial might

24 ¹ The constant exposure to such deep scrutiny is the price APS and Pinnacle West pay for the
25 special economic benefits of being a state-sanctioned monopoly. *Woods*, 171 Ariz. at 290;
26 *Davis v. Corp. Comm'n*, 96 Ariz. 215, 218 (1964) ("The monopoly is tolerated only because it
is to be subject to vigilant and continuous regulation by the Corporation Commission, . . .")

27 ² Note that the reference in *Carrington* to courts "review[ing] the validity of Commission
28 investigations" is itself a tip-off that such matters are not consigned to agency review.

1 it earns off utility customers for undue political influence. That race saw some \$3.2 million
2 spent by “dark money” independent expenditure groups (“IEGs”) both to defeat candidates
3 widely viewed as disfavored by APS and to support candidates widely seen as APS-backed.
4 [See Exs. “A”, “B”; Ex. “C” at 4-8]³. The source of the “dark money” support, which dwarfed
5 the amount of campaign funds normally spent on ACC races, is generally suspected to be APS
6 or its parent, Pinnacle West. [See *id.*] Yet, when Commissioner Burns sought voluntary
7 disclosure by APS and Pinnacle West of their roles in the dark money contributions, they
8 refused. [See Ex. “D”, at Exs. 2-6].

9 The decision by a regulated monopoly and its parent to keep secret financial and other
10 efforts to orchestrate political victories for their favored candidates is troubling. As is the
11 companies’ refusal to disclose how they structure the ubiquitous “marketing” and “charitable”
12 spending that results in APS branding on public buildings and government or community
13 events. Commissioner Burns has heard the repeated cry of incredulous APS consumers
14 wondering why they are paying to have a regulated monopoly, who needs no marketing to gain
15 customers, spend so heavily on public events of no direct value to its consumers. He has heard
16 objections to forced political speech, complaining that APS and Pinnacle West increase
17 customer rates only to use millions in revenues to support political candidates the companies
18 favor, but which individual consumers may not.

19 The consumer concerns are well justified. After all, Pinnacle West publicly
20 acknowledges in securities filings that “[w]e derive essentially all of our revenues and earnings
21 from our wholly-owned subsidiary, APS.” [See Ex. “E” (excerpts of Pinnacle West 10-K) at
22 3]. So, even if, as APS contends, the political, charitable and marketing spending comes from
23 Pinnacle West’s income, Pinnacle West’s almost exclusive reliance on APS revenues means
24 its political spending depends on monies earned off APS customers. Also, Commissioner

25
26 ³ The numerous exhibits attached to and referenced in this Response do not convert the
27 motion to one for summary judgment because they were either matters appended to the
28 complaint, are matters of public record, or elaborate on matters alleged specifically in the
Complaint and that Defendants are already on notice of. *See Strategic Dev. & Constr., Inc. v.*
7th & Roosevelt Partners, LLC, 224 Ariz. 60, 64 (App. 2010).

1 Burns is motivated by his first-hand experience with APS effectively using the threat that it
2 will pull funding of government events to motivate another government official to express
3 support to Commissioner Burns on ACC business APS wished to influence.

4 Equally disconcerting, Pinnacle West has publicly announced that it received grand jury
5 subpoenas from the United States Attorney for the District of Arizona seeking “information
6 principally pertaining to the 2014 statewide general election races in Arizona for Secretary of
7 State and for positions on the ACC,” including “records involving certain Pinnacle West
8 officers and employees, including the Company’s Chief Executive Officer [Defendant Brandt],
9 as well as communications between Pinnacle West personnel and a former ACC
10 Commissioner.” [See Complaint at ¶ 81; Ex. “E”, at 27]. Finally, APS and Pinnacle West
11 recently announced that they will remain very active in political campaign spending, and that
12 in 2016 Pinnacle West spent over \$10 million to support political speech groups or influence
13 elections. [See Ex. “F” at 4-5]. While refusing to disclose any involvement in the “dark
14 money” spending of 2014, APS and Pinnacle West promise they will not relent in attempts to
15 influence ACC elections. The ongoing risk of APS financially “capturing” commissioners
16 poses a clear and present danger to APS utility consumers.

17 All the foregoing raise legitimate concerns that: 1) APS and Pinnacle West factor their
18 expected costs for political spending, “marketing” and lobbying into their ACC proposed rate
19 calculations; 2) APS and Pinnacle West’s investments in commissioners require commissioner
20 disqualifications in APS matters; 3) APS and Pinnacle West may have violated Arizona law
21 and coordinated “dark money” contributions to gain the allegiance of sitting commissioners; 4)
22 APS and Pinnacle West embrace efforts to financially “capture” commission seats that
23 Arizona consumers cannot effectively counter without effective mandatory transparency and
24 disclosure rules; and 5) APS may be hiding behind its “parent” to conceal unlawful or at least
25 publicly suspect efforts to unduly influence commissioners in their favor. These issues
26 squarely fall within the concerns that can and should be addressed by an ACC commissioner.

27 **A. Rate Making Issues.**

28 APS and Pinnacle West contend they do not make campaign expenditures, or politically

1 influential marketing or charitable contributions, from APS's funds, but only from Pinnacle
2 West's income. However, this accounting sleight of hand does not lessen the near certainty
3 that APS's rate requests to the ACC are intended and calculated to provide sufficient excess
4 ratepayer revenue to pay just such expenses. As noted above, the many millions Pinnacle
5 West apparently spends to support or oppose political candidates or causes, and to grease
6 wheels with government officials by supporting their local civic events, must come from APS
7 ratepayer payments – the nearly exclusive source of all income to Pinnacle West.

8 Moreover, Pinnacle West regularly publishes financial performance expectations
9 concerning dividends, earnings and even return on equity for its shareholders, prospective
10 shareholders, potential business partners and potential financing sources.⁴ Pinnacle West even
11 provides prospective investors details of its ACC rate hike requests, and in a recent forecast
12 discussing the current APS rate-setting case, Pinnacle West announced its “indicated annual
13 dividend is \$2.62 per share; targeting ~ 5% annual dividend growth.” [*Id.* at 8-17; 20].

14 Anticipated dividends, net earnings and returns are logically determined only *after*
15 Pinnacle West subtracts its anticipated corporate expenses. To forecast dividends, earnings,
16 growth or ROE figures, Pinnacle West must first know what it expects to spend in future
17 periods, including on political contributions, marketing for APS, charitable contributions, or
18 lobbying. If the resulting post-expense net profits are not enough to meet target goals like its
19 published 5% annual dividend growth rate, Pinnacle West must either adjust its expense plans
20 or seek higher net returns on its exclusive source of income – APS revenues. Given that
21 Pinnacle West has so regularly engaged in substantial “marketing” spending and indicates it
22 will continue to pump millions into election cycles, Pinnacle West shows no sign of adjusting
23 expenses. It must therefore ensure that the ratepayer income it is generating is sufficient to

24
25 ⁴ Pinnacle West frequently issues “forward-looking statements based on current expectations,
26 including statements regarding our earnings guidance and financial outlook and goals.” [*See*
27 Ex. “G”, at 2]. In promoting itself to investors Pinnacle West touts “[a]nnual dividend growth
28 targets” and its consolidated “return on equity” or ROE figure. [*Id.* at 3]. The ROE helps
describe how Pinnacle West balances profitability, asset management and financial leverage so
investors can assess whether they will receive a desired return on their investment.

1 cover such expenses and still meet its publicized dividend, earnings and ROE targets.

2 Pinnacle West can make sure such expenses are covered with sufficient profits to spare
3 by making adjustments to items like the “rate of return” it bakes into its ACC rate requests for
4 APS. [See Ex. “G”, at 11]; see *Arizona Corp. Comm’n v. Arizona Pub. Serv. Co.*, 113 Ariz.
5 368, 370 (1976) (“The company is entitled to a reasonable return . . .”) There can be little
6 doubt that Pinnacle West and APS ensure that APS’s rate requests, especially its “rate of
7 return” requests, are set to guarantee Pinnacle West will both have all the monies it plans to
8 use for political campaign spending and influence peddling, with more than enough left over to
9 meet its published financial targets. Thus, APS must logically build its rate requests using
10 planned political speech expense data. This means that the financial and budgeting records
11 and operational details Commissioner Burns seeks through his subpoenas will likely show that
12 APS is asking the ACC to approve consumer rate increases designed to reimburse (directly or
13 indirectly) political expenses even though ratepayers might find such expenditures offensive,
14 wasteful or unduly expensive. Proof from APS and Pinnacle West that they are seeking to
15 ensure coverage of such expenses would demonstrate they are violating ACC policy and
16 justify downward adjustments of APS’s rate requests. APS understandably wants to avoid the
17 downside that comes with disclosure, but the subpoenas seek evidence critical to
18 Commissioner Burns’ advocating for appropriate rates and protecting consumers paying them.

19 **B. Commissioner Disqualification Issues.**

20 In deciding an APS rate case, the ACC Commissioners exercise, in part, their judicial
21 function. *State ex rel. Corbin v. Arizona Corp. Comm’n*, 143 Ariz. 219, 226 (App. 1984) (“[I]n
22 a rate-making proceeding the process by which the Commission gathers evidence through
23 evidentiary hearings and reaches its ultimate decision is quasi-judicial in nature.”). As
24 recognized by the U.S. Supreme Court, when elected adjudicatory officers have received a
25 highly disproportionate share of their campaign support from a party appearing before them,
26 fundamental due process policies may disqualify them from participating in the proceeding.
27 *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009). Here, the campaign support
28 clandestinely given to Commissioners Forese and Little in 2014, and the enormous spending

1 Pinnacle West openly used its APS revenues for in support of Commissioners Tobin and Dunn
2 in the 2016 election raise substantial disqualification issues under the *Caperton* standard.

3 After all, current Commissioners Forese and Little were reportedly the beneficiaries of
4 some \$3.2 million in “dark money” IEG spending in 2014 while their own campaign
5 committees spent, according to state records, just \$269,550.00 and \$260,573.32 respectively.
6 [See Ex. “C” at 4-6; Exs. “H” and “I”]. The campaign expenditure reports of the Arizona
7 Secretary of State credit Commissioner Forese with \$492,637.00 in direct, supportive IEG
8 expenditures, and Commissioner Little with \$494,138.00, almost *double* the amounts their
9 own campaign committees expended. [See *id.*] If that money came from Pinnacle West/APS,
10 the over 180% increase in campaign support could trigger disqualification of Commissioners
11 Forese and Little from the APS rate case and other proceedings impacting APS under
12 *Caperton*. See *Caperton*, 556 U.S. at 873-890 (requiring disqualification when party’s
13 contributions in support of judicial candidate’s election campaign was 3 times the candidate’s
14 own committee expenditures.) The connection of Commissioners Forese and Little to the dark
15 money already motivated a motion to disqualify those commissioners in an earlier APS rate
16 request case which APS withdrew after the motion was filed. [See Exs. “C” and “J”, at 11].

17 Moreover, while Pinnacle West lavishly spent APS-generated money in support of
18 Commissioners Tobin and Dunn in the 2016 campaign in a very public display [see Ex. “F”, at
19 5-6; Ex. “K” at 1-2], the total of around \$4 million it apparently contributed to help get them
20 elected helped boost their IEG support to 25 times their own campaign committee spending for
21 Commissioner Tobin and over 11 times for Commissioner Dunn. [See Ex. “K”, at 1-2; Exs.
22 “Q” and “R”]. This publicly disclosed spending could equally justify disqualification under
23 *Caperton*, particularly if the investigation reveals any evidence of even indirect coordination
24 between APS/Pinnacle West operatives and their campaigns.⁵

25
26 ⁵ In a political chess move proving just how sophisticated the APS/Pinnacle West machine is,
27 Pinnacle West threw Commissioner Burns onto its misleading “Arizona’s Sustainable Solar
28 Team” ads in 2016 along with Commissioners Tobin and Dunn. [See Ex. “K”, at 2]. This was
done without Commissioner Burns’ approval or agreement, and as an “independent
expenditure” he could not stop it. Likely hoping to spark negative voter suspicions of

1 The documents and testimony required by the contested subpoenas will disclose
2 whether APS or Pinnacle West agents engaged in any direct or indirect coordination with other
3 commissioners' campaigns, which could violate Arizona's election laws, particularly for Clean
4 Elections candidates. *See* A.R.S. §§ 16-922 (independent and coordinated expenditures); 16-
5 941 – 16-943. And, it will allow Commissioner Burns to exercise his constitutional duty to
6 protect Arizona consumers and determine whether evidence mandating disqualification of any
7 other commissioners exists before they vote on APS's rate request.

8 **C. Investigation and Development of New Transparency and Disclosure Rules.**

9 If APS has used its relationship with Pinnacle West to mask political contributions
10 funded from the wallets of APS customers, that scandal alone mandates implementation of
11 new, robust transparency and disclosure ("T&D") rules to prevent such clandestine behavior
12 and keep commissioner candidates honest, independent and accountable to the consumers the
13 Arizona Constitution protects. Commissioner Burns has launched just such an investigatory
14 rulemaking proceeding (the "T&D Docket"). [*See* Complaint at ¶¶'s 100-106; Ex. "L"
15 hereto]. Investigating the need for, and the most effective designs for such rules fits precisely
16 within his express powers under Ariz.Const., art XV, § 3 to make "reasonable rules,
17 regulations, and orders, by which [public service] corporations shall be governed in the
18 transaction of business within the state". It also follows the nationwide "modern trend in
19 administrative law and procedure to open regulatory process as broadly as possible to public
20 input" so that fully educated consumers can help combat the evils of "regulatory capture" by
21 well-heeled regulated entities or special interests. *New Cingular Wireless PCS, LLC v. Pub.*
22 *Utils. Com.*, 246 Cal. App. 4th 784, 805 n.20, 201 Cal. Rptr. 3d 652, 669 (2016) (citing
23 Schwarcz, *Preventing Capture Through Consumer Empowerment Programs: Some Evidence*
24 *from Insurance Regulation*, in *Preventing Regulatory Capture, Special Interest Influence and*
25 *How to Limit It* (Carpenter & Moss edits., 2014) at p. 369). Commissioner Burns has
26 hypocrisy given Commissioner Burns' ongoing public dispute with APS/Pinnacle West,
27 APS/Pinnacle West knew that if their open support did not negatively impact Commissioner
28 Burns, the advertising would at least help ensure he was a minority of one on the Commission.
Given those facts, Commissioner Burns would not be disqualified from addressing APS issues.

1 appropriately dually issued the disputed subpoenas in the rulemaking docket [*see* Complaint,
2 at ¶¶'s 100-101], and they will provide key, relevant evidence for those purposes, as well.

3 **III. APS's and Pinnacle West's Reversal of Position Seeks to Delay Disclosure That**
4 **Might Upend Expedited Approval of their Rate Request.**

5 A few months ago, APS and Pinnacle West acknowledged the Court's powers to
6 resolve the questions Commissioner Burns raises here without further administrative
7 proceedings. They asked this Court to decide Commissioner Burns' powers and stop
8 enforcement of the same subpoenas in Maricopa County Superior Court Case No. CV2016-
9 014895 (the "APS Lawsuit"). [*See* Ex. "D" at 2, lns. 12-3 and ¶¶'s 4, 5, 49-56, 58-66, 68 - 71;
10 Ex. "M" at 1-2]. But APS filed that challenge when it still risked having its majority support
11 on the ACC eroded in the fall, 2016 elections. After Pinnacle West spent millions in campaign
12 support, the election went APS's way, encouraging Defendants to withdraw their action, and
13 now argue instead that the Court must instead leave the issue to the very ACC commissioners
14 whose disqualification may be required if the subpoenaed information is provided.

15 APS's reversal also coincides with its recent moves to quickly conclude its pending
16 request to the ACC for substantial rate increases. APS moved expeditiously to secure a
17 "settlement" among a large number of the participants in its rate case, the hearing procedures
18 in the rate case are now engaged, and a real possibility exists that APS will try to obtain ACC
19 commissioner approval of their rate increase within the next two to three months. [*See* Exs.
20 "N" and "O"; Ex. "P", at 8; *see also* Emergency Motion for Speedy Hearing filed herewith].
21 This perhaps best explains their switch from advocating a judicial solution to now promoting
22 an administrative process that has not moved an inch on a motion to quash they filed on
23 September 9, 2017. The Defendants' goal to avoid disclosures that may justify deeper
24 investigation of APS's financial and rate-calculating practices, or raise material questions of
25 commissioner disqualification, before APS's rate hikes passed is best served by avoiding this
26 Court's intervention. However, Commissioner Burns and the public interests he serves have
27 substantial reasons to ensure subpoena compliance before APS's rate case is concluded

28 **IV. The Doctrines Defendants Rely On Are Not Applicable for Multiple Reasons.**

Defendants argue that the doctrines of primary jurisdiction and exhaustion of remedies

1 preclude judicial review. However, those are doctrines of discretionary judicial administration
2 that may not be applied summarily. *See, e.g., Campbell v. Chatwin*, 102 Ariz. 251, 257 (1967)
3 (describing exhaustion doctrine as a rule of judicial administration subject to numerous
4 exceptions).⁶ The doctrines can be applied only when their unique purposes are met, and are
5 subject to many independent exceptions, several of which apply here. *See, e.g., Farmers Inv.*
6 *Co.*, 136 Ariz. at 373 (holding that “[t]he exhaustion doctrine must be applied in each case
7 with an ‘understanding of its purposes and of the particular administrative scheme involved.’”)

8 For example, the Arizona courts hold that the exhaustion and primary jurisdiction
9 doctrines should not be applied when the question presented is one with which the courts
10 routinely deal and special agency expertise is not needed. *See Campbell*, 102 Ariz. at 257
11 (holding exhaustion not applicable to cases “in which the agency’s expertise is unnecessary.”);
12 *Farmers Ins. Co.*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 87-88 (declining to
13 apply primary jurisdiction doctrine where questions were commonly decided by courts and did
14 not require special agency expertise); *Mountain States*, 120 Ariz. at 431-32 (same). Nor do
15 they apply “where jurisdiction of the agency is being contested,” where the agency proceeding
16 is merely permissive, not mandatory, where the administrative process could be futile to the
17 plaintiff, or “where irreparable harm will be caused to the party by requiring the exhaustion of
18 the administrative remedies.” *Campbell*, 102 Ariz. at 257; *see Univar*, 122 Ariz. at 224 (same);
19 *Farmers Ins. Co.*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 86. Every one of these
20 exceptions applies to Commissioner Burns’ claims.

21 **A. Commissioner Burns Seeks Interpretation of his Constitutional Authority,**
22 **Which is a Common Court Function Requiring No Agency Expertise.**

23 The “doctrine of primary jurisdiction is a discretionary rule created by the courts to

24 ⁶ *See also Univar Corp. v. City of Phoenix*, 122 Ariz. 220, 224 (1979) (recognizing multiple
25 situations where exhaustion doctrine does not apply); *Coconino Cnty. v. Antco, Inc.*, 214 Ariz.
26 82, 90 n.4 (App. 2006) (describing “primary jurisdiction, a *discretionary* doctrine”) (emphasis in original); *Farmers Ins. Co. v. Arizona State Land Dep’t.*, 136 Ariz. 369, 373
27 (App. 1982)(detailing exhaustion exceptions); *Campbell v. Mountain States Tel. & Tel. Co.*,
28 120 Ariz. 426, 431 (App. 1978) (“*Mountain States*”) (“[W]e decline to apply the discretionary
doctrine of primary jurisdiction so as to vest *exclusive* primary jurisdiction in the Corporation
Commission.”); *see also Wonders v. Pima Cty.*, 207 Ariz. 576, 578 (App. 2004) (same).

1 effectuate the efficient handling of cases in specialized areas where agency expertise may be
2 useful.” *Wonders*, 207 Ariz. at 578 (quoting *Mountain States*, 120 Ariz. at 430). Similar
3 deference for special agency expertise justifies the exhaustion doctrine. *See, e.g., Campbell*,
4 102 Ariz. at 257 (rejecting exhaustion of remedies doctrine “where the agency’s expertise is
5 unnecessary.”) Thus, the doctrines are designed to minimize judicial interference in questions
6 specifically delegated by the legislature to determination through an agency holding special
7 expertise, *see, e.g., Original Apartment Movers, Inc.*, 179 Ariz. at 422, and where the
8 questions presented raise “issues of fact not within the conventional experience of judges or
9 cases requiring the exercise of administrative discretion”, *Mountain States*, 120 Ariz. at 430.

10 However, where the questions presented fall within the conventional responsibilities of
11 the courts or involve the types of issues judges commonly resolve, ceding primary jurisdiction
12 to an agency or forcing a party to subject their claims to agency resolution is not appropriate.
13 *See, Campbell*, 102 Ariz. at 257; *Univar*, 122 Ariz. at 224; *Mountain States*, 120 Ariz. at 431-
14 32; *Wonders*, 207 Ariz. at 578. *Mountain States* provides an apt example for this case. There,
15 the court considered whether an individual phone service customer’s tort and contract claims
16 against a phone service provider should be dismissed as within the primary jurisdiction of the
17 ACC and subject to a “detailed investigation and hearing process within the Commission” that
18 the Arizona Legislature established under A.R.S. § 40-321, *et seq.* to address customer
19 complaints with adequacy of phone service. 120 Ariz. at 428. While the court acknowledged
20 that “it is undeniable that [the plaintiff’s] claims do involve the adequacy and method of
21 telephone service and that such issues are within the Commission’s jurisdiction under A.R.S. §
22 40-203 and § 40-321(A),” it found “these issues are not predominant.” *Id.* at 431-32. Rather,
23 the plaintiff’s complaint “deal[t] with much more than the mere manner and means of
24 providing telephone service.” *Id.* at 432. Instead, the “case involve[d] relatively simple tort
25 and contract issues revolving around a central inquiry: whether, under traditional judicial
26 principles, [the utility defendants] committed a civil wrong against appellant.” *Id.* Thus, “the
27 claims’ most important aspects involve facts and theories of tort and contract far afield of the
28 Commission’s area of expertise and statutory responsibility” and which were “the type of

1 traditional claims with which our trial courts of general jurisdiction are most familiar and
2 capable of dealing.” *Id.* There was no need to employ the primary jurisdiction doctrine. *Id.*

3 The predominant questions surrounding Commissioner Burns’ constitutional authority
4 to issue and enforce the subpoenas involve interpretation of the state constitution provisions at
5 Article XV, Sections 3 and 4. And, just as in *Mountain States*, deciding such questions is
6 squarely within the traditional role and expertise of the courts, not the ACC. Moreover, the
7 Legislature has enacted no statute granting the ACC exclusive jurisdiction to determine the
8 scope of each Commissioner’s individual constitutional powers. So, the most important
9 aspects of Commissioner Burns’ claims raise “the type of traditional claims with which our
10 trial courts of general jurisdiction are most familiar and capable of dealing.” *Mountain States*,
11 120 Ariz. at 432. Deferral to agency jurisdiction or expertise is inappropriate and unnecessary.

12 **B. The Dispute Commissioner Burns’ Raises Over His Jurisdiction Can Never**
13 **Be Subject to the Primary Jurisdiction or Exhaustion Doctrines.**

14 When the question at hand is whether a government official has jurisdiction or authority
15 to take a particular act, neither the primary jurisdiction nor the exhaustion of remedies
16 doctrines preclude immediate judicial review. *See Trico Elec. Coop. v. Ralston*, 67 Ariz. 358,
17 363 (1948) (holding that a question of the ACC’s jurisdiction to take certain actions was a
18 matter for the courts and not subject to the exclusive jurisdiction of the ACC); *Coconino*
19 *Cnty.*, 214 Ariz. at 86 (exhaustion of remedies does not apply where agency jurisdiction is in
20 issue); *Murphy v. Bd. of Med. Exam’r of State of Ariz.*, 190 Ariz. 441, 448 (App.
21 1997) (superior court properly determined jurisdictional bounds of agency even though agency
22 had not issued a final decision within definition of A.R.S. § 12-901(2)); *see also, Moulton v.*
23 *Napolitano*, 205 Ariz. 506, 512-13 (App. 2003) (doctrine of exhaustion of administrative
24 remedies not applicable where subject matter jurisdiction of agency was contested).

25 Here, APS and Pinnacle West have defied Commissioner Burns’ subpoenas in large
26 part, contesting that he has no authority to require the withheld information and to compel the
27 deposition of their executive. [See Complaint at ¶¶’s 96-98, 109, and Ex. 4]. Commissioner
28 Burns disagrees, and asks the Court to decide the jurisdictional question. This is the classic
type of jurisdictional contest excluded from the primary jurisdiction and exhaustion doctrines.

1 **C. The Doctrines of Primary Jurisdiction and Exhaustion Do Not Apply to the**
2 **Agency’s Request for a Ruling on its Own Powers.**

3 The procedural doctrines Defendants invoke apply only to parties to an administrative
4 proceeding, not to the agency and its decisionmakers. Nor do the administrative proceeding
5 rules Defendants invoke apply to a sitting commissioner. For example, the Defendants rely on
6 A.R.S. § 40-253 which provides that “[a]fter any final order or decision is made *by the*
7 *commission*, any *party to the action or proceeding* or the attorney general on behalf of the
8 state may apply for a rehearing . . .” (emphasis added). The statute delineates between the
9 commission as the decision-making body and the “party” who must apply for a rehearing. The
10 ACC’s administrative rules define who constitutes “Parties” in ACC proceedings, and they do
11 not include the commissioners. *See* Ariz. Admin. Code R14-3-103. More, the ACC rule
12 allowing a witness or person subpoenaed to file a motion to quash with the ACC creates a
13 relief option for subpoenaed parties – it does not tie the commissioners to that process or
14 restrict them in any way from seeking judicial declarations of their constitutional subpoena
15 rights. *See* Ariz. Admin. Code R14-3-109(O). The administrative “remedies” are simply not
16 designed for or limiting upon the Commissioner who is really an extension of the agency.

17 **D. The Administrative Process Defendants Invoke is, at Best, Permissive Only.**

18 The exhaustion doctrine also never applies where the administrative process invoked is
19 merely permissive or elective and not mandatory. *See, e.g., Bentivegna v. Powers Steel &*
20 *Wire Products, Inc.*, 206 Ariz. 581, 585 (App. 2003); Stated another way, a request for
21 judicial review is not barred for failure to exhaust administrative remedies “unless . . . recourse
22 to that remedy is *required* by statute or agency rule.” *Bonnichsen v. United States, Dep’t. of*
23 *the Army*, 969 F.Supp. 614, 623 (D.Or. 1997) (emphasis added). As noted above, nothing in
24 the ACC statutes or rules prevent Commissioner Burns from seeking a declaration of his
25 constitutional subpoena and investigatory powers. Administrative exhaustion is not required.

26 **E. Defendants’ Motions to Quash Have Been Denied; Waiting is Futile.**

27 “The exhaustion doctrine is concerned with the timing of judicial review of
28 administrative action.” *Wonders*, 207 Ariz. at 578 (*quoting Mountain States*, 120 Ariz. at
429). Where the issue posed to the Court is not a challenge to a still-pending administrative

1 proceeding, the exhaustion doctrine does not apply. *See id.*; *see also Bonnichsen*, 969 F.Supp.
2 at 623 (noting that for exhaustion rule to apply, there must exist “a remedy to exhaust.”) Nor
3 is exhaustion required where there was no administrative proceeding pending when the
4 plaintiff’s complaint was filed. *See Coconino Cnty.*, 214 Ariz. at 86. That is the case here.

5 APS fails to disclose that its motions to quash in the APS rate case have already been
6 denied under the ACC procedural order for that case which provides that if a motion is not
7 decided within twenty (20) calendar days of filing, it is deemed denied. [See Ex. “P”, at 10,
8 Ins. 20-22]. That order had already worked a denial of APS’s original motion to quash filed
9 with the ACC on September 9, 2016. The second motion to quash Defendants filed with the
10 ACC on March 10, 2017 [Motion to Dismiss, Exh. “1”], has also not been acted upon, and
11 therefore was denied by operation of the procedural order in the pending rate case by March
12 30, 2017, the same day Defendants filed their Motion to Dismiss. Thus, as to the subpoenas
13 issued in the rate case, there is no administrative proceeding left to exhaust.

14 Also, even a party to a mandatory administrative proceeding need not continue that
15 proceeding if it would be futile or harmful. *Coconino Cty.*, 214 Ariz. at 86. The remaining
16 commissioners allowed both of Defendants’ motions to quash to be denied administratively by
17 inaction. Commissioner Burns cannot change that. He is but one vote among five, and has
18 faced recent attempts to block him from even putting matters on the ACC agenda. Waiting on
19 something to happen at the agency is futile and prejudicial.

20 **V. The Administrative Procedures Act Does Not Preclude a Court Decision.**

21 Defendants also argue that Commissioner Burns was unauthorized to issue a subpoena
22 in the T&D Docket because the Arizona Administrative Procedures Act (“APA”) at A.R.S. §
23 41-1023(A) allows only for voluntary disclosure of information in a rulemaking proceeding.
24 [Motion to Dismiss at 5:3-12.] Not only would such a rigid rule violate the law recognizing
25 incredibly broad and flexible rulemaking and discovery powers in the ACC commissioners⁷,

26 ⁷ The Arizona courts caution against “imparting an unintended rigidity to the administrative
27 process” of rulemaking at the ACC and thereby rendering the ACC “inflexible” and incapable
28 of dealing with many of the complex and specialized problems arising within its constitutional
authority. *Ariz. Corp. Comm’n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128 (1975).

1 the Defendants' argument ignores the superiority of state constitutional provisions to statutes.

2 "[P]ower vested in the Commission by the Constitution cannot be limited by statute."
3 *Ariz. Corp. Comm'n v. Superior Court*, 105 Ariz. 56, 62 (1969); *see* Ariz.Const., art. XV, § 6
4 (legislature is empowered to enlarge, but not decrease, ACC's powers); *Mountain States*, 120
5 Ariz. at 431. And the Constitution expressly authorizes individual commissioner subpoenas in
6 support of rulemaking proceedings. After all, Ariz.Const., art. XV, § 4 grants each member of
7 the commission "the power of a court of general jurisdiction to enforce the attendance of
8 witnesses and the production of evidence by subpoena" for the enumerated purposes of the
9 ACC. The purposes constitutionally enumerated at Article XV, § 3 to which those subpoena
10 powers refer expressly include: 1) "mak[ing] reasonable rules, regulations, and orders, by
11 which such [public service] corporations shall be governed in the transaction of business"; and
12 2) "mak[ing] and enforce[ing] reasonable rules, regulations, and orders for the convenience,
13 comfort, and safety, and the preservation of the health, of the . . . patrons of such corporations.
14 Neither the constitutional provisions, nor the corollary statute authorizing investigations of
15 Defendants' records (A.R.S. § 40-241), express any limitations on the subpoena power just
16 because the investigation supports rulemaking. And the constitutionally intended breadth of
17 commissioner investigatory and rulemaking powers, *see Carrington*, 199 Ariz. at 305
18 (investigatory powers); *Palm Springs Util. Co.*, 24 Ariz. App. at 128 (rulemaking powers),
19 confirm that the powers to compel testimony and records expressed in Ariz.Const., art. XV, §
20 4 are inconsistent with and supersede any statute that might limit rulemaking investigations to
21 toothless voluntary productions. The APA is irrelevant.

22 VI. Conclusion

23 None of the bars the Defendants propose applies to the straightforward declaratory
24 judgment claim seeking determination of Commissioner Burns' constitutional authority to
25 issue and enforce the subpoenas. The Court must deny the motion to dismiss and move this
26 case forward as expeditiously as possible.

27 ...

28 ...

1 DATED this 18th day of April, 2017.

2
3 BASKIN RICHARDS PLC

4
5 /s/ William A. Richards

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11 ORIGINAL of the foregoing e-filed
12 on this 18th day of April, 2017.

13 COPY of the foregoing served via
14 TurboCourt this 18th day of April, 2017
to the following parties:

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EXHIBIT G

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POLITICAL PARTICIPATION POLICY

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Political Participation Policy

2016

1. PURPOSE

1.1. Pinnacle West Capital Corporation ("Pinnacle West", "we" or "the Company") participates in the democratic process to advance our long-term business interests and the interests of our customers, communities and shareholders. We believe that broad political participation contributes to a strong democracy, promotes good government and encourages sound policymaking.

1.1.1. Our company's principal subsidiary, Arizona Public Service Company ("APS") has the responsibility to provide customers in our service territory with safe, reliable and affordable electricity. Because Pinnacle West and APS participate in a wide range of business activities to fulfill this responsibility, policy decisions at the federal, state and local levels can have profound impacts on virtually all aspects of our business.

1.1.2. Our experience and expertise give us an informed perspective on how public policy can affect our company, our customers, our communities, and Arizona's energy future. We have a responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision-makers.

1.2. The purpose of this Policy is to promote compliance with all applicable federal, state and local laws, rules, and regulations surrounding political contributions by Pinnacle West in a manner consistent with our values. This Policy also describes our decision-making and oversight processes for political spending and for reporting of political contributions, in which processes both management and our Board of Directors play important roles.

2. POLICY STATEMENTS

2.1. As one of the largest and longest-serving local businesses in Arizona, Pinnacle West takes its commitment to corporate citizenship seriously. Being a good corporate citizen may include being informed about issues, encouraging our employees to volunteer and participate in their communities, speaking publicly about the issues of the day, sponsoring a political action committee and, where permitted by law, considering the contribution of corporate funds to political candidates, political parties, political action committees, and organizations that engage in political activities. These activities may also include independent expenditures, or the sponsoring of a political action committee that engages in independent expenditures, in relation to elections of candidates to office, get-out-the-vote efforts, and ballot initiatives and referenda. In general, a political expenditure is independent when it is not made in cooperation, consultation, or at the request or suggestion of a candidate, a candidate's agent or authorized political committee, or a political party.

2.2. Many factors guide our political contribution decisions. In general, we may support candidates and organizations that share an interest in public policy that furthers our business objectives and promotes our mission of creating a sustainable energy future for Arizona. The Company's contribution decisions are based on what is in the best interests of Pinnacle West and not based on the personal preferences of our executives.

2.3. We do not make corporate contributions to political candidates or office holders where prohibited by law. Arizona law prohibits companies from making political contributions to candidates for Arizona offices. Under no circumstances will any political contribution be given in anticipation of, in recognition of, or in return for any official act.

2.4. We may contribute to entities organized and operating under section 527 of the Internal Revenue Code. These organizations are established primarily for the purpose of influencing the outcome of elections of candidates for public office. We may also use corporate funds to make independent expenditures or to contribute to organizations engaged in lobbying or political campaign activity or that make independent expenditures at the federal, state or local level, as permitted by law.

2.5. Pinnacle West may directly sponsor a registered political action committee that engages in independent expenditures concerning specific candidates, initiatives, or referenda. Pinnacle West is committed to ensuring that any separate sponsored political action committee meets or exceeds any reporting requirements to the various governmental agencies that collect contribution and expenditure data.

2.6. Pinnacle West may participate in federal, state, and local issues through membership in trade associations, which we join to represent various business and industry interests. In addition, we actively promote the economic health of the jurisdictions we serve through our activities with chambers of commerce. Pinnacle West supports many charitable and non-profit organizations that support a variety of community and educational endeavors. These organizations, in turn, are at times actively involved in promoting social welfare missions to our elected leaders. Depending on their roles, any of these organizations may be subject to lobbyist registration and disclosure reporting obligations, with their reports made public by federal and state agencies overseeing lobbying activities.

2.7. Pinnacle West discloses its political contributions as required by law. In addition, we will provide a voluntary annual report of contributions subject to this Policy as set forth in Section 5 below. The report will be posted to our website as part of this Policy not later than March 1 of the succeeding calendar year. We expect those organizations in which we are members or to whom we provide contributions to meet their own obligations to report the Company's contribution to the appropriate government authorities.

3. THE PINNACLE WEST POLITICAL ACTION COMMITTEE

3.1. Pinnacle West encourages its employees to be active members of their communities. Along with participation in civic, charitable and volunteer activities, this includes participation in the political process. All eligible employees of Pinnacle West may make voluntary contributions to the Pinnacle West Political Action Committee ("PNWPAC"). The PNWPAC is a voluntary, nonprofit, non-partisan political association sponsored by Pinnacle West to provide an easy and effective means for eligible employees to become politically involved if they wish to do so.

3.2. The PNWPAC is directed by a board comprised solely of employees, which makes and approves all decisions regarding political contributions and budget. Potential contributions are reviewed by a five-member PNWPAC executive committee, which makes recommendations for contributions to be considered by the PNWPAC board. The articles of organization of the PNWPAC can be found [here](#). Applicable law permits administrative support of PNWPAC from Pinnacle West. PNWPAC provides timely disclosure of its political contributions as required by law.

3.3. Pinnacle West encourages employees to participate in the political process personally by voting and by supporting candidates of their choosing. Such participation is not in the Company's name or on its behalf. Employees will not be reimbursed for personal political contributions or expenses, either directly, through compensation increases, or otherwise.

3.4. Some Pinnacle West employees choose to serve their communities by holding public office. We encourage these employees and appreciate their spirit of public service. Employees of Pinnacle West who wish to campaign for, or serve in, public office must first notify their supervisor and the Senior Vice President of Public Policy.

3.4.1. Employees are not permitted to campaign on work time; nor can they use company resources to further their campaigns. Employees must clearly communicate that they are acting as private individuals, that their views are their own, and that they are not representing or endorsed by the Company.

3.4.2. Employees who hold public office must recuse themselves from matters directly involving Pinnacle West. If an employee in public office is uncertain whether an issue directly affects Pinnacle West, he or she should contact the Senior Vice President of Public Policy.

4. OVERSIGHT

4.1. Corporate contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice President, State and Local Affairs, based on the guidelines and objectives described in

this Policy. These executives typically receive input from other members of our senior management team, including our Chief Executive Officer.

4.2. During the first quarter of each calendar year management reviews with the Corporate Governance Committee of the Board of Directors its anticipated governmental affairs strategies for the year, including the priorities for the Company's political expenditure and lobbying activities. During the year, management periodically reports to the Corporate Governance Committee on the progress of the Company's strategy, including any significant activities not encompassed within the initial strategy discussion. Following each of its meetings, the Corporate Governance Committee provides a summary to the Board of the matters involving political activities, which were discussed at the meeting. In addition, as part of its reporting responsibilities to the Board after year-end, management summarizes the actions taken in furtherance of its governmental affairs strategies during the year.

4.3. At least annually, the Corporate Governance Committee reviews this Policy and recommends to the Board any revisions it deems necessary. Our Board's oversight of our governmental affairs strategy ensures compliance with applicable law and alignment with our policies and Code of Ethics and Business Practices.

5. ANNUAL REPORT OF POLITICAL CONTRIBUTIONS

5.1. In 2016, Pinnacle West made the following contributions to political parties, political action committees, candidates for political office and other entities organized and operating under section 527 of the Internal Revenue Code:

Organization	Contribution
AZ GOP (Arizona Republican Party)	\$175,000
AZ Democratic Party	\$60,000
AZ GOP Victory (Arizona Republican Party)	\$410,000
Dodie Londen	\$25,000
Emerge	\$10,000
Let's Grow Virginia PAC	\$6,000
Common Good, VA PAC	\$5,000
AZ House Victory PAC	\$5,000
AZ Senate Victory PAC	\$5,000
Morning in Nevada PAC	\$2,500
National LT Governors Association	\$10,000
Senate Republican Leadership Fund	\$15,000

5.2. In 2016, Pinnacle West made the following payments to trade associations that may have been used for lobbying-related or other political activities as reported to us by the trade associations. These amounts are not permitted to be deducted as ordinary and necessary business expenses under the Internal Revenue Code:

Organization	Non-Deductible Portion of Dues/Payments
American Legislative Exchange Council	\$10,000

Edison Electric Institute	\$132,150
Nuclear Energy Institute	\$17,306
Arizona Tax Research Association	\$10,617

5.3. In 2016, Pinnacle West made the following payments to entities organized under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code which may have used some of the proceeds for independent political expenditures, including but not limited to ballot initiatives, or lobbying-related or political campaign activities, as permitted by law:¹

Organization	Amount
Arizona Cattle Feeders Association ²	\$400,000
Market Freedom Alliance	\$4,130,500
Expect More Arizona	\$100,000
Republican Governor's Association	\$75,000
Arizona Free Enterprise Club	\$50,000

5.4. In 2016, Pinnacle West made the following independent political expenditures either directly or in support of an independent expenditure political action committee sponsored by the Company:

Organization	Amount
Arizona Coalition for Reliable Electricity	\$4,175,000
Arizonans for Responsible Drug Policy	\$10,000
Arizona Grassroots Action PAC	\$550,000
Yes on Prop 493	\$2,500

6. LINKS TO OFFICIAL REPORTS

6.1. Contributions to federal elections may be found on the Federal Elections Commission website at <http://www.fec.gov/pindex.shtml>.

6.2. Contributions to Arizona state and local elections can be found on the Arizona Secretary of State's website at <https://www.azsos.gov/elections/campaign-finance-reporting> and the Citizens Clean Elections Commission website at <http://www.ccec.state.az.us/en/resources>.

6.3. Reports on the Company's federal lobbying activity can be found on the websites of the U.S. House of Representatives at http://clerk.house.gov/public_disc/financial.aspx and the U.S. Senate at <http://www.senate.gov/legislative/lobbyingdisc.htm#lobbyingdisc=lda>.

1. In addition, Pinnacle West made a post-election contribution of \$5,000 to Trump for America, a 501(c)(4) supporting the Presidential transition team, but which was not engaged in ballot initiatives, lobbying-related or political campaign activities otherwise discussed in this section.

2. 501(c)(5).

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EXHIBIT H

NEWS (/WWW.USNEWS.COM/NEWS) / BEST STATES (/WWW.USNEWS.COM/NEWS/BEST-STA...) / ARIZONA NEWS (/WWW.USNEWS.COM/NEWS/ARIZO...

APS to Be a Player in Elections and Report Spending Annually

Officials with Arizona's largest electric utility say they'll freely and publicly spend money on political races.

| March 18, 2017, at 9:06 p.m.

(https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.usnews.com%2Fnews%2Fbest-states%2Farizona%2Farticles%2F2017-03-18%2Faps-to-be-a-player-in-elections-and-report-spending-annually%3Fsrc=usn_fb;

(https://twitter.com/share?url=https%3A%2F%2Fwww.usnews.com%2Fnews%2Fbest-states%2Farizona%2Farticles%2F2017-03-18%2Faps-to-be-a-player-in-election-annually%3Fsrc=usn_tw&text=APS%20to%20Be%20a%20Player%20in%20Elections%20and%20Report%20Spending%20Annually%207C%20Arizona%20News%20

(http://www.reddit.com/submit?url=https%3A%2F%2Fwww.usnews.com%2Fnews%2Fbest-states%2Farizona%2Farticles%2F2017-03-18%2Faps-to-be-a-player-in-elections-and-report-spending-annually%3Fsrc=usn_rd)

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AP

PHOENIX (AP) — Officials with Arizona's largest electric utility say they'll freely and publicly spend money on political races.

Through its parent company, Arizona Public Service Co. announced Friday it will continue to involve itself in political campaigns, including those for people who will regulate the company.

It also will report political contributions every March.

Pinnacle West Capital Corp. owns APS, a regulated utility that serves 1.2 million residential and commercial customers in 11 of 15 Arizona counties.

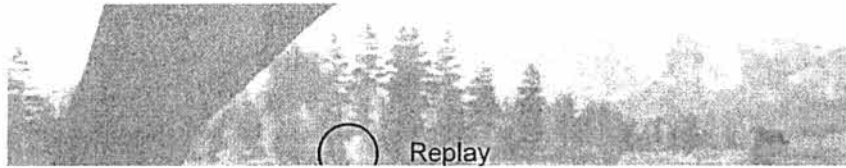
A policy statement from Pinnacle West said "we have the responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision makers."

APS officials said they were making the policy public to increase transparency.

"This voluntary report goes beyond our legal requirements to provide additional information about our contributions," APS spokeswoman Anna Stewart said. "Pinnacle West supports organizations and issues that further our mission of creating a sustainable energy future for Arizona."

ADVERTISING

<https://www.usnews.com/news/best-states/arizona/articles/2017-03-18/aps-to-be-a-player-in-elections-and-report-spending-annually>
<https://www.usnews.com/news/best-states/arizona/articles/2017-03-18/aps-to-be-a-player-in-elections-and-report-spending-annually>
<https://www.usnews.com/news/best-states/arizona/articles/2017-03-18/aps-to-be-a-player-in-elections-and-report-spending-annually>



Some critics of APS don't like the new policy.

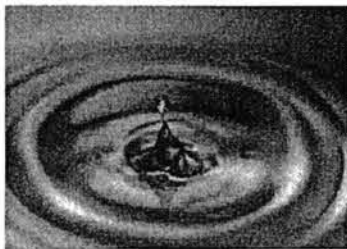
Arizona Corporation Commissioner Robert Burns is suing APS, Pinnacle West and its CEO to enforce subpoenas related to money spent on elections.

Others said the utility should not be involved in commission elections at all.

"APS should be ashamed of itself that it feels the need to buy elections of a commission that regulates them," Tom Chabin, who unsuccessfully ran for a commission seat last year, told The Arizona Republic. "No other private utility in the state of Arizona participates in commission campaigns. That is the standard APS should live by."

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[What you gain from market makers' risk](#)

[it-states%2Farizona%2Farticles%2F2017-03-18%2Faps-to-be-a-player-in-elections-and-report-spending-annually%3Fsrc=usn_fb\)](#)
[%2Farticles%2F2017-03-18%2Faps-to-be-a-player-in-elections-and-report-spending-annually%3Fsrc=usn_tw&text=APS%20to%20Be%20a%20Player%20in%20Elections%20and%20Report%20Spending%20Annually%3Fsrc=usn_rd\)](#)

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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY <u>Ken M</u> DEPUTY	

IN THE UNITED STATES DISTRICT COURT **REDACTED FOR PUBLIC DISCLOSURE**
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

CR-17-00713-PHX-JJT(JZB)

vs.

INDICTMENT

- (1) Gary Leonard Pierce,
(Counts 1-8)
- (2) George Harry Johnson,
(Counts 1-8)
- (3) James Franklin Norton, and
(Counts 1-8)
- (4) Sherry Ann Pierce,
(Counts 1-8)

VIO: 18 U.S.C. § 371
(Conspiracy)
Count 1

18 U.S.C. § 666(a)(1)(B)
(Federal Programs Bribery)
Count 2

18 U.S.C. §§ 1341 and 1346
(Honest Services Mail Fraud)
Count 3

18 U.S.C. §§ 1343 and 1346
(Honest Services Wire Fraud)
Counts 4-8

Defendants.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times material to this Indictment:

The principal individuals, entities and terminology referenced in this Indictment include the following:

1. Defendant GARY LEONARD PIERCE was an elected Commissioner of the Arizona Corporation Commission and the Chairman in 2011 and 2012. The annual salary for Arizona Corporation Commission Commissioners in 2011 and 2012 was \$79,500.
2. The Arizona Corporation Commission (hereinafter "ACC") was established

1 pursuant to the Arizona Constitution, and regulates utilities in the State, including water,
2 electricity, gas, sewer and telephone. The ACC has five Commissioners who are elected
3 statewide who: function in an executive capacity; function in a legislative capacity when
4 adopting rules and regulations; and act in a judicial capacity while sitting as a tribunal and
5 making decisions in contested matters. The ACC has ultimate responsibility for final
6 decisions on the granting or denial of rate adjustments, enforcement of safety and public
7 service requirements, and approval of securities matters.

8 3. Defendant GEORGE HARRY JOHNSON was the owner of Johnson Utilities, LLC,
9 dba Johnson Utilities Company (hereinafter "Johnson Utilities, LLC"), a utility that
10 provided water and wastewater services to customers in Pinal County, Arizona,
11 headquartered in Scottsdale, Arizona, and that is subject to the regulation of the ACC.

12 4. Defendant GEORGE HARRY JOHNSON was the owner of Johnson International,
13 Inc., an entity engaged in real estate development and headquartered in Scottsdale,
14 Arizona.

15 5. Defendant JAMES FRANKLIN NORTON was a lobbyist for R&R Partners, a firm
16 engaged in government affairs among other endeavors, and a retained lobbyist for
17 defendant GEORGE HARRY JOHNSON and Johnson Utilities, LLC, before the ACC and
18 other entities within the State of Arizona.

19 6. Defendant SHERRY ANN PIERCE was the spouse of defendant GARY
20 LEONARD PIERCE.

21 7. An unindicted coconspirator (hereinafter the "unindicted coconspirator") acted at
22 the direction of defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON,
23 JAMES FRANKLIN NORTON and SHERRY ANN PIERCE.

24 **BACKGROUND RE MATTERS BEFORE THE**
25 **ARIZONA CORPORATION COMMISSION**

26 8. On August 24, 2010, all five ACC Commissioners, including defendant GARY
27 LEONARD PIERCE, considered whether defendant GEORGE HARRY JOHNSON, as
28 the owner of Johnson Utilities, LLC, should have his personal income tax expenses

1 reimbursed, and paid for, by payments made by the Utility's customers, and whether to
2 increase the Utility's wastewater division's revenues through a rate base increase.
3 Defendant GARY LEONARD PIERCE, and the other four Commissioners, rejected these
4 proposals. With respect to the recovery of personal income taxes, the five ACC
5 Commissioners agreed with Arizona's Residential Utility Consumer Office and ACC Staff
6 in finding that, "As we determined in Decision No. 71445 (December 23, 2009), it is not
7 appropriate or in the public interest to allow pass through entities such as the Company to
8 recover personal income tax expenses through rates. The Company's request is not
9 reasonable and will be denied." With respect to the requested rate base increase, the five
10 ACC Commissioners noted in their decision that, "The fair value of the Company's
11 wastewater division rate base is \$136,562, and therefore a rate of return analysis is not
12 reasonable. Authorizing an operating margin of 3 percent produces rates and charges that
13 are just and reasonable." Johnson Utilities, LLC, had proposed a fair value rate base of
14 \$17,479,735. See ACC Decision No. 71854, Docket No. WS-02987A-08-0180, dated
15 August 25, 2010.

16 9. In an ACC Open Meeting on September 6, 2011, defendant GARY LEONARD
17 PIERCE voted to increase the fair value of the wastewater division rate base for Johnson
18 Utilities, LLC, from \$136,562 to \$18,244,755, thereby increasing the Utility's revenues,
19 and to "Include explicit language for Johnson Utilities to request income tax expense
20 prospectively in a future A.R.S. § 40-252 Petition if the Commission changes its policy on
21 imputed income tax expense." Two Commissioners voted with defendant GARY
22 LEONARD PIERCE, one Commissioner abstained from the vote and one Commissioner
23 dissented. In the dissent, the Commissioner stated, "With no additional evidence or an
24 amended recommended opinion and order presented to the Commissioners, there was
25 nothing new to persuade me that we erred in Decision No. 71854. Given the lack of new
26 evidence or information, I do not believe that the record supports the vote to amend
27 Decision No. 71854 and the resulting increases in rates for Johnson Utilities' customers."
28 See ACC Decision No. 72579, Amending Decision No. 71854, Docket No. WS-02987A-

1 08-0180, docketed on September 15, 2011.

2 10. On June 15, 2012, defendant GARY LEONARD PIERCE, as an ACC
3 Commissioner, docketed a draft policy proposing that the ACC allow pass-through entities
4 (such as Johnson Utilities, LLC) to recover personal income tax expenses through rates
5 charged to customers. See Policy Statement on Income Tax Expense for Tax Pass-Through
6 Entities: ACC Docket No. W-00000C-06-0149, dated June 15, 2012.

7 11. On June 27, 2012, ACC Staff stated, "Staff recommends continuation of the
8 Commission practice to not recognize income taxes as a component of the cost of service
9 when utility services are rendered by an entity classified as an S-Corp or certain LLCs."
10 See Staff Report – In the Matter of the Arizona Corporation Commission – Generic
11 Investigation (Docket No. W-00000C-06-0149), and an attached Supplemental Staff
12 Report, both dated June 27, 2012.

13 12. On February 12, 2013, defendant GARY LEONARD PIERCE, along with three
14 commissioners, voted to allow the recovery of personal income taxes by pass-through
15 public service corporations (such as Johnson Utilities, LLC). One Commissioner dissented
16 and stated, "Asking rate payers to pay personal income taxes for shareholders of utilities
17 organized as subchapter "S" corporations or limited liability corporations (LLCs) (aka
18 "pass-through entities") is neither justifiable nor good public policy. Personal income taxes
19 are not a utility expense." See ACC Decision No. 73739, Docket No. W-00000C-06-0149,
20 docketed on February 22, 2013.

21 **COUNT ONE**
22 **Conspiracy**
(18 U.S.C. § 371)

23 13. The factual allegations contained in paragraphs 1 through 12 of this indictment are
24 incorporated by reference and re-alleged as if fully set forth herein.

25 14. Beginning at a time unknown to the Grand Jury, but by no later than in or about
26 August 2011, and continuing through in or about February 2013, in the District of Arizona,
27 and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON,
28 JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, along with others known

1 and unknown to the Grand Jury, did knowingly and willfully agree and conspire with each
2 other, and others known and unknown to the Grand Jury, to commit the following offenses
3 against the United States:

4 (a) Title 18, United States Code, Sections 666(a)(1)(B) (Federal Programs
5 Bribery);

6 (b) Title 18, United States Code, Sections 1341 and 1346 (Honest Services Mail
7 Fraud); and

8 (c) Title 18, United States Code, Sections 1343 and 1346 (Honest Services Wire
9 Fraud).

10 **OBJECT OF THE CONSPIRACY AND SCHEME TO DEFRAUD**

11 15. The object of the defendants' conspiracy was for defendant GEORGE HARRY
12 JOHNSON to unlawfully pay money and property to defendants GARY LEONARD
13 PIERCE and SHERRY ANN PIERCE, through JAMES FRANKLIN NORTON and the
14 unindicted coconspirator, in exchange for defendant GARY LEONARD PIERCE, as a
15 Commissioner for the ACC, to unlawfully execute official actions benefiting defendant
16 GEORGE HARRY JOHNSON and Johnson Utilities, LLC, with respect to matters
17 pending before the ACC and thereby deprive the ACC, the customers of Johnson Utilities,
18 LLC, and the citizens of the State of Arizona of their right to the honest services of elected
19 members of the ACC through bribery and concealment of material information.

20 16. During the period of the conspiracy, defendants GARY LEONARD PIERCE and
21 SHERRY ANN PIERCE fraudulently and unlawfully received \$31,500.00 from defendant
22 GEORGE HARRY JOHNSON, through defendant JAMES FRANKLIN NORTON, in
23 exchange for defendant GARY LEONARD PIERCE's favorable and unlawful official
24 actions on matters before the ACC, including Decision Number 72579, in ACC, Docket
25 Number WS-02987A-08-0180, which added back into a rate base a wastewater division
26 plant of \$18,244,755 which was previously disallowed, and the docketing of a proposed
27 policy change in ACC, Docket Number W-00000C-06-0149, which lead to the ACC
28 permitting utilities organized as subchapter S corporations and limited liability companies

1 (a.k.a. LLCs and pass-through entities) to charge their ratepayers for the utility owner's
2 personal income taxes.

3 17. In order to accomplish the payment of money and property to defendant GARY
4 LEONARD PIERCE, defendant JAMES FRANKLIN NORTON agreed to act as a conduit
5 between defendants GEORGE HARRY JOHNSON and GARY LEONARD PIERCE, and
6 in so doing was offered the opportunity to purchase land valued at approximately \$350,000
7 for defendant GARY LEONARD PIERCE, and caused an unindicted coconspirator to act
8 as a consultant for defendant GEORGE HARRY JOHNSON for approximately \$6,000 per
9 month plus expenses, and hire defendant SHERRY ANN PIERCE and pay her
10 approximately \$3,500 per month during the period of from in or about November 2011
11 through in or about August 2012. The purpose of this consulting arrangement was to
12 conceal the direct payment of funds by defendant GEORGE HARRY JOHNSON to
13 defendant GARY LEONARD PIERCE.

14 18. During the period of the conspiracy, the unindicted coconspirator set up a separate
15 consulting firm and bank checking account, and billed defendant GEORGE HARRY
16 JOHNSON approximately \$6,000 per month plus expenses. In order to hide the conspiracy
17 and scheme to defraud, the unindicted coconspirator, while acting at the direction of
18 defendants GEORGE HARRY JOHNSON and JAMES FRANKLIN NORTON, asked
19 defendant SHERRY ANN PIERCE to submit monthly invoices for approximately \$3,500;
20 sent to, and received emails from, defendant SHERRY ANN PIERCE; took defendant
21 SHERRY ANN PIERCE to lunch; and gave defendant SHERRY ANN PIERCE simple
22 tasks some of which were performed and reviewed by defendant GARY LEONARD
23 PIERCE. Upon receipt of the approximately \$6,000 invoices plus expenses, defendant
24 GEORGE HARRY JOHNSON paid the unindicted coconspirator via checks drawn on an
25 account held by Johnson, International, Inc. Upon receipt of the checks, the unindicted
26 coconspirator then sent monthly checks to defendant SHERRY ANN PIERCE for
27 approximately \$3,500 via a separate checking account.

OVERT ACTS

19. In furtherance of the conspiracy, and to effect the objects of the conspiracy, defendants and others known and unknown to the Grand Jury, committed, or caused to be committed, the following overt acts, among others.

20. On or about August 4, 2011, defendant GARY LEONARD PIERCE mailed and docketed a letter to parties requesting proposed amendments to aid in the ACC's consideration of a Petition to amend ACC Decision Number 71854, which related to an increase in water and wastewater rates for customers of Johnson Utilities, LLC.

21. On or about August 9, 2011, defendant GEORGE HARRY JOHNSON and Johnsons Utilities, LLC, filed a proposed amendment modifying ACC Decision Number 71854 concerning relief related to an increase in water and wastewater rates for customers of Johnson Utilities, LLC and other matters favorable to defendant GEORGE HARRY JOHNSON.

22. On or about August 11, 2011, defendant GARY LEONARD PIERCE introduced and docketed an Amendment, titled "Pierce Proposed Amendment #1," for ACC Docket Number WS-02987A-08-0180, in support of Johnson Utilities, LLC, Agenda for discussion and consideration at the ACC Open Meeting on August 11, 2011.

23. On or about August 11, 2011, during a meeting of the ACC, defendant GARY LEONARD PIERCE voted to direct ACC staff to prepare and docket an order incorporating the requested modifications outlined in his "Pierce Proposed Amendment #1," including "The inclusion of language permitting the Company to request income tax expense prospectively in a future A.R.S. § 40-252 Petition if the ACC changes its policy relating to imputed income tax expense," for ACC Docket Number WS-02987A-08-0180, for consideration at the ACC's September 2011 Open Meeting.

24. On or about September 6, 2011, at the ACC's September Open Meeting, defendant GARY LEONARD PIERCE called for a vote, and voted to accept, Johnson Utilities, LLC's, petition to amend ACC Decision Number 71854. In so doing, defendant GARY LEONARD PIERCE voted to authorize a rate increase for water and wastewater rates for

1 customers of Johnson Utilities, LLC, in Pinal County, Arizona. The vote passed the ACC
2 by a three to two vote. Resulting ACC Decision Number 72579 included modifications,
3 contrary to the recommendations of the ACC's staff, which defendant GEORGE HARRY
4 JOHNSON had requested, including adding into the rate base for Johnson Utilities, Inc.,
5 \$18,244,755, which was previously disallowed, specifically \$10,892,391 for wastewater
6 plant cost and \$7,352,364 related to affiliated profit. In the same proceeding and vote,
7 defendant GARY LEONARD PIERCE voted to pass a provision which permitted
8 defendant GEORGE HARRY JOHNSON's company to request personal income tax
9 expense prospectively in a future A.R.S. § 40-252 Petition if the ACC changed its policy
10 relating to imputed personal income tax expense.

11 25. On or about September 28, 2011, defendants GARY LEONARD PIERCE,
12 SHERRY ANN PIERCE, JAMES FRANKLIN NORTON, and the unindicted
13 coconspirator, met for dinner. During the meeting, the unindicted conspirator told
14 defendant SHERRY ANN PIERCE that a contract and a confidentiality agreement would
15 be created as part of her employment with the unindicted coconspirator's consulting firm.
16 The purpose of the confidentiality agreement was to prevent defendant SHERRY ANN
17 PIERCE from disclosing the nature of her employment and the source of the money to third
18 parties.

19 26. On or about November 9, 2011, defendant GEORGE HARRY JOHNSON signed
20 check number 6081, drawn on an account ending with 1236 held by Johnson International,
21 Inc., for \$6,000, and made payable to the unindicted coconspirator's consulting firm.

22 27. On or about November 9, 2011, defendant SHERRY ANN PIERCE signed an
23 "Independent Contractor Agreement" with the unindicted coconspirator's consulting firm.

24 28. On or about November 9, 2011, defendant SHERRY ANN PIERCE signed a
25 confidentiality agreement related to her "Independent Contractor Agreement" with the
26 unindicted coconspirator's consulting firm.

27 29. On or about November 10, 2011, defendants GEORGE HARRY JOHNSON and
28 JAMES FRANKLIN NORTON met with the unindicted coconspirator, and defendant

1 GEORGE HARRY JOHNSON gave check number 6081, drawn on an account ending with
2 1236, held by Johnson International, Inc., for \$6,000, and made payable to the unindicted
3 coconspirator's consulting firm, to the unindicted coconspirator.

4 30. On or about November 10, 2011, the unindicted coconspirator opened checking
5 account ending with 5861 to be held in the name of the unindicted coconspirator's
6 consulting firm.

7 31. On or about November 18, 2011, defendants GARY LEONARD PIERCE and
8 SHERRY ANN PIERCE accepted a check, numbered one, drawn on an account ending
9 with 5861, for \$3,500, from the unindicted coconspirator. The original source of the money
10 was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant
11 SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she
12 jointly held with defendant GARY LEONARD PIERCE.

13 32. On or about December 8, 2011, defendant GEORGE HARRY JOHNSON signed
14 check number 6084, drawn on an account ending with 1236, held by Johnson International,
15 Inc., for \$6,000, and made payable to the unindicted coconspirator's consulting firm.

16 33. On or about December 12, 2011, defendant SHERRY ANN PIERCE sent an
17 invoice, via email, to the unindicted coconspirator, dated December 8, 2011, for
18 "December Consulting Services as per Contract: \$3,500.00."

19 34. On or about December 19, 2011, defendants GARY LEONARD PIERCE and
20 SHERRY ANN PIERCE accepted a check, numbered 1001, drawn on an account ending
21 with 5861, for \$3,500, from the unindicted coconspirator. The original source of the money
22 was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant
23 SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she
24 jointly held with defendant GARY LEONARD PIERCE.

25 35. On or about December 27, 2011, defendant GARY LEONARD PIERCE sent an
26 email to the unindicted coconspirator regarding the possible purchase of land valued at
27 approximately \$350,000 by defendants GARY LEONARD PIERCE and JAMES
28 FRANKLIN NORTON. In the email defendant GARY LEONARD PIERCE states,

1 “Please pass on to Jim.” The funds for the purchase were to be provided by defendant
2 GEORGE HARRY JOHNSON.

3 36. On or about December 29, 2011, defendant GARY LEONARD PIERCE sent an
4 email to defendant JAMES FRANKLIN NORTON regarding the possible purchase of land
5 by defendants GARY LEONARD PIERCE and JAMES FRANKLIN NORTON with an
6 opening offer to purchase of \$300,000. The email included a “Letter of Intent to Purchase”
7 dated December 29, 2011, which listed defendants GARY LEONARD PIERCE and
8 JAMES FRANKLIN NORTON as purchasers. In addition, in the email, defendant GARY
9 LEONARD PIERCE advised defendant JAMES FRANKLIN NORTON that he would
10 advise the real estate agent to take his name off the letter of intent so that defendant JAMES
11 FRANKLIN NORTON “will be the buyer.” The funds for the purchase were to be
12 provided by defendant GEORGE HARRY JOHNSON.

13 37. On or about January 13, 2012, defendant GEORGE HARRY JOHNSON signed
14 check number 6095, drawn on an account ending with 1236, held by Johnson International,
15 Inc., for \$6,097.99, and made payable to the unindicted coconspirator’s consulting firm.

16 38. On or about January 31, 2012, defendants GARY LEONARD PIERCE and
17 SHERRY ANN PIERCE accepted a check, numbered three, drawn on an account ending
18 with 6130, held in the name of the unindicted coconspirator’s consulting firm, for \$3,500,
19 from the unindicted coconspirator. The original source of the money was defendant
20 GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN
21 PIERCE and deposited into an account ending with 9243, an account she jointly held with
22 defendant GARY LEONARD PIERCE.

23 39. On or about February 9, 2012, defendant GEORGE HARRY JOHNSON signed
24 check number 6099, drawn on an account ending with 1236, held by Johnson International,
25 Inc., for \$7,084.80, and made payable to the unindicted coconspirator’s consulting firm.

26 40. On or about February 21, 2012, defendants GARY LEONARD PIERCE and
27 SHERRY ANN PIERCE accepted a check, numbered 1501, drawn on an account ending
28 with 6130, held in the name of the unindicted coconspirator’s consulting firm, for \$3,500,

1 from the unindicted coconspirator. The original source of the money was defendant
2 GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN
3 PIERCE and deposited into an account ending with 9243, an account she jointly held with
4 defendant GARY LEONARD PIERCE.

5 41. On or about March 20, 2012, defendant GEORGE HARRY JOHNSON signed
6 check number 6108, drawn on an account ending with 1236, held by Johnson International,
7 Inc., for \$6,028.23, and made payable to the unindicted coconspirator's consulting firm.

8 42. On or about April 6, 2012, defendants GARY LEONARD PIERCE and SHERRY
9 ANN PIERCE accepted a check, numbered 1502, drawn on an account ending with 6130,
10 held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the
11 unindicted coconspirator. The original source of the money was defendant GEORGE
12 HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and
13 deposited into an account ending with 9243, an account she jointly held with defendant
14 GARY LEONARD PIERCE.

15 43. On or about April 11, 2012, defendant GEORGE HARRY JOHNSON signed check
16 number 6112, drawn on an account ending with 1236, held by Johnson International, Inc.,
17 for \$6,069.53, and made payable to the unindicted coconspirator's consulting firm.

18 44. On or about May 1, 2012, defendant GEORGE HARRY JOHNSON signed check
19 number 6114, drawn on an account ending with 1236, held by Johnson International, Inc.,
20 for \$6,029.79, and made payable to the unindicted coconspirator's consulting firm.

21 45. On or about May 16, 2012, defendants GARY LEONARD PIERCE and SHERRY
22 ANN PIERCE accepted a check, numbered 1503, drawn on an account ending with 6130,
23 held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the
24 unindicted coconspirator. The original source of the money was defendant GEORGE
25 HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and
26 deposited into an account ending with 9243, an account she jointly held with defendant
27 GARY LEONARD PIERCE.

28 46. On or about June 5, 2012, defendant GEORGE HARRY JOHNSON signed check

1 number 6118, drawn on an account ending with 1236, held by Johnson International, Inc.,
2 for \$6,144.56, and made payable to the unindicted coconspirator's consulting firm.

3 47. On or about June 11, 2012, defendants GARY LEONARD PIERCE and SHERRY
4 ANN PIERCE accepted a check, numbered 1504, drawn on an account ending with 6130,
5 held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the
6 unindicted coconspirator. The original source of the money was defendant GEORGE
7 HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and
8 deposited into an account ending with 9243, an account she jointly held with defendant
9 GARY LEONARD PIERCE.

10 48. On or about June 15, 2012, defendant GARY LEONARD PIERCE docketed a draft
11 "Policy Statement on Income Tax Expense for Tax Pass-Through Entities; Docket No. W-
12 00000C-06-0149" before the ACC.

13 49. On or about July 11, 2012, defendants GARY LEONARD PIERCE and SHERRY
14 ANN PIERCE accepted a check, numbered 1505, drawn on an account ending with 6130,
15 held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the
16 unindicted coconspirator. The original source of the money was defendant GEORGE
17 HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and
18 deposited into an account ending with 7187, an account she jointly held with defendant
19 GARY LEONARD PIERCE.

20 50. On or about July 31, 2012, the unindicted coconspirator sent an email to defendant
21 SHERRY ANN PIERCE that advised that contract work for clients would be limited as of
22 August 1, 2012.

23 51. On or about July 31, 2012, defendant SHERRY ANN PIERCE sent an email to the
24 unindicted coconspirator regarding the end of payments from defendant GEORGE
25 HARRY JOHNSON in which she stated, "I've really enjoyed working with and getting to
26 know you better. Gary told me about his conversation about this with Jim so I was already
27 aware."

28 52. On or about August 3, 2012, defendant GEORGE HARRY JOHNSON signed check

1 number 6128, drawn on an account ending with 1236, held by Johnson International, Inc.,
2 for \$6,027.48, and made payable to the unindicted coconspirator's consulting firm.

3 53. On or about August 9, 2012, the unindicted coconspirator sent an email to defendant
4 SHERRY ANN PIERCE that advised, "Just got my final check in the mail while I was in
5 Tucson so will get a check out to you tomorrow."

6 54. On or about August 13, 2012, defendants GARY LEONARD PIERCE and
7 SHERRY ANN PIERCE accepted a check, numbered 1506, drawn on an account ending
8 with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500
9 from the unindicted coconspirator. The original source of the money was defendant
10 GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN
11 PIERCE and deposited into an account ending with 9243, an account she jointly held with
12 defendant GARY LEONARD PIERCE.

13 55. On February 12, 2013, as documented in ACC Decision No. 73739, Docket No. W-
14 00000C-06-0149, docketed on February 22, 2013, defendant GARY LEONARD PIERCE
15 voted to allow the recovery of personal income taxes by pass-through public service
16 corporations (such as Johnson Utilities, LLC).

17 All in violation of Title 18, United States Code, Section 371.

18 **COUNT TWO**
19 **(Federal Programs Bribery)**
20 **(18 U.S.C. § 666(a)(1)(B))**

21 56. Paragraphs 1 through 55 of the Indictment are realleged and incorporated by
22 reference as if fully set forth herein.

23 57. From in or about August 2011 to in or about February 2013, in the District of
24 Arizona and elsewhere, defendant GARY LEONARD PIERCE, being an agent of the
25 ACC, a political subdivision within the State of Arizona, which received benefits of
26 \$10,000 in the one-year period from in or about January 2011 to in or about December
27 2011, and received benefits of \$10,000 in the one-year period from in or about January
28 2012 to in or about December 2012, from federal programs involving a grant, contract,

subsidy, loan, guarantee, insurance, and other forms of federal assistance, did corruptly solicit, demand, accept, and agree to accept something of value intending to be influenced and rewarded in connection with the business, transaction, and series of transactions of such state government involving something of value of \$5,000 or more: namely, defendant GARY LEONARD PIERCE, knowingly and willfully, solicited, accepted and agreed to accept money, ultimately totaling \$31,500, and solicited real property valued at approximately \$350,000, from defendant JAMES FRANKLIN NORTON, a retained lobbyist for Johnson Utilities, LLC, intending to be influenced and rewarded in connection with matters Johnson Utilities, LLC, had pending before the ACC, including allowing defendant GEORGE HARRY JOHNSON's personal income tax expenses to be reimbursed, and paid for, by payments made by the Utility's customers, and allowing a significant increase in Johnson Utilities, LLC's wastewater division's revenues through a rate base increase, and defendants GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE did knowingly and intentionally aid the commission of the offense by routing payments and acting as a conduit of the money to defendant GARY FRANKLIN PIERCE in order to hide the true nature and purpose of the payment of the money.

All in violation of Title 18, United States Code, Sections 666(a)(1)(B).

COUNT THREE
(Honest Services Mail Fraud)
(18 U.S.C. §§ 1341 and 1346)

58. Paragraphs 1 through 57 of the Indictment are realleged and incorporated by reference as if fully set forth herein.

59. From in or about August 2011 to in or about February 2013, in the District of Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE knowingly devised, intended to devise and participated in, a scheme and artifice to defraud and deprive the ACC, the customers of Johnson Utilities, LLC, and the citizens of the State of Arizona of their right to the honest services of elected members of the ACC through concealment

of material information and bribery in exchange for defendant GARY LEONARD PIERCE's material official actions.

60. On or about the date of the Count listed below, in the District of Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud and deprive, placed and caused to be placed in a post office and an authorized depository for mail, to be sent and delivered by the United States Postal Service and by a private and commercial interstate carrier, the following matter and thing:

Count	Date – On or About	Description
3	8/3/2012	Zions First National Bank Check Number 6128, dated August 3, 2012, for \$6,027.48, account holder Johnson International, Inc., Scottsdale, Arizona, mailed to the unindicted coconspirator via the United States Postal Service.

All in violation of Title 18, United States Code, Sections 1341 and 1346.

COUNTS FOUR THROUGH EIGHT
(Honest Services Wire Fraud)
(18 U.S.C. §§ 1343 and 1346)

61. Paragraphs 1 through 60 of the Indictment are realleged and incorporated by reference as if fully set forth herein.

62. From in or about August 2011 to in or about February 2013, in the District of Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE knowingly devised, intended to devise and participated in, a scheme and artifice to defraud and deprive the ACC, the customers of Johnson Utilities, LLC, and the citizens of the State of Arizona of their right to the honest services of elected members of the through concealment of material information and bribery in exchange for defendant GARY LEONARD PIERCE's

1 material official actions.

2 63. On or about the dates of the Counts listed below, in the District of Arizona and
 3 elsewhere, defendant GARY LEONARD PIERCE, GEORGE HARRY JOHNSON,
 4 JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, for the purpose of executing
 5 and attempting to execute the above-described scheme and artifice to defraud and deprive,
 6 did knowingly transmit and cause to be transmitted, by means of wire and radio
 7 communications in interstate commerce, certain writings, pictures signals and sounds (i.e.,
 8 emails and funds transfers) to and from the District of Arizona, as set forth in the chart
 9 below, each instance being a separate count of this Indictment:

Count	Date -- On or About	Wire Communications From and To	Description
4	06/12/2012	Wells Fargo Bank, N.A. to Zions First National Bank	Settlement of Zions First National Bank Check Number 6118, dated June 5, 2012, for \$6,144.56, account holder Johnson International, Inc., Scottsdale, Arizona, payable to the unindicted coconspirator and deposited into a Wells Fargo Bank, N.A. account.
5	07/11/2012	First Fidelity Bank to Wells Fargo Bank, N.A.	Settlement of Wells Fargo Bank, N.A., Check Number 1505, dated June 29, 2012, for \$3,500.00, account holder the unindicted coconspirator, payable to, and endorsed by, defendant SHERRY ANN PIERCE, and deposited into a First Fidelity Bank account.

Count	Date – On or About	Wire Communications From and To	Description
6	07/31/2012	Defendant SHERRY ANN PIERCE to Coconspirator Acting as a Consultant	An email in which defendant SHERRY ANN PIERCE, via cox.net, stated to the unindicted coconspirator, via msn.com, “[I]’ve really enjoyed working with you and getting to know you better. Gary told me about his conversation about this with Jim so I was already aware. I’m assuming since it’s as of August 1 st that I should send you the invoice for July? It’s attached but let me know.....”
7	08/06/2012	Wells Fargo Bank, N.A. to Zions First National Bank	Settlement of Zions First National Bank Check Number 6128, dated August 3, 2012, for \$6,027.48, account holder Johnson International, Inc., Scottsdale, Arizona, payable to the unindicted coconspirator, and deposited into a Wells Fargo Bank, N.A. account.
8	08/09/2012	The Unindicted Coconspirator to Defendant SHERRY ANN PIERCE	An email in which the unindicted coconspirator, via msn.com, advised defendant SHERRY ANN PIERCE, via cox.net, “[J]ust got my final check in the mail while I was in Tucson so will get a check out to you tomorrow.”

All in violation of Title 18, United States Code, Sections 1343 and 1346.

A TRUE BILL

/s/

FOREPERSON OF THE GRAND JURY
Date: May 23, 2017

ELIZABETH A. STRANGE
Acting United States Attorney
District of Arizona

/s/

FREDERICK A. BATTISTA
FRANK T. GALATI
Assistant U.S. Attorneys

EXHIBIT J



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL May 4, 2016	No. I16-005 (R16-002) Re: The authority of the Arizona Corporation Commission or individual Commissioners to obtain information from a public service corporation and its affiliates.
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To: Commissioner Robert L. Burns
Arizona Corporation Commission

Questions Presented

You have requested a formal opinion on the following questions:

1. "Does A.R.S. § 40-241 give an individual Commissioner the power to gather information related to a public service corporation and its affiliates' political contributions, lobbying and charitable contributions in order to ensure that all funds expended are consistent with the Commission's authority to set just and reasonable rates? In other words, does the statute give an individual Commissioner the power to look at this information because it is or may be reasonably necessary information for effective ratemaking and to protect the public interest?"
2. "Does A.R.S. § 40-241 permit an individual Commissioner to investigate the degree to which a public service corporation and its affiliates are intertwined in terms of organization, operation and structure in order to ensure the security and financial health of the

affiliates in order to protect consumers from overreaching and abuse by public service corporations and their affiliates such that an affiliate's operations do not hinder the operations of the public service corporation? Specifically, does the statute permit an individual Commissioner to inspect a public service corporation's and/or its affiliates' accounts, books, papers and documents in order to conduct such a review?"

3. "Does Article XV of the Arizona Constitution give the Commission and/or an individual Commissioner the power to require a public service corporation to report information about itself or about its parent, subsidiary, and other affiliated corporations relevant to the Commission's authority under Article XV, particularly in light of *Arizona Corporation Commission v. State of Arizona ex rel. Grant Woods*, 171 Ariz. 286, 830 P.2d 807 (1992); *Arizona Public Service Company v. Arizona Corporation Commission*, 157 Ariz. 532, 760 P.2d 532 (1988), and Article 8 of the Arizona Administrative Code (Affiliated Interest Rules)?"

Summary Answer

The questions presented inquire regarding the authority of the Arizona Corporation Commission (Commission) and individual Commissioners under Article XV of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") § 40-241.

The Commission has broad constitutional authority relating to reporting requirements and inspection of any Public Service Corporation ("PSC") and its affiliates.¹ Under Article XV, Section 13 of the Arizona Constitution, the Commission has the power to require reports from PSCs and companies whose stock is offered for sale to the public ("Public Companies"), which could include PSC affiliates. Furthermore, under Article XV, Section 3, the Commission has the

¹ As used in this opinion, the term "affiliate" means any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, a PSC. *See, e.g.*, A.A.C. R14-2-801(1).

authority to adopt rules reasonably necessary for effective ratemaking. Pursuant to this authority, the Commission has adopted the Affiliated Interest Rules, Ariz. Admin. Code (“A.A.C.”) R14-2-801 through -806, which include reporting requirements that apply to both PSCs and certain affiliates.

The Legislature has also granted individual Commissioners limited powers under A.R.S. § 40-241. Under this statute, an individual Commissioner is authorized to inspect the accounts, books, papers, and documents of a PSC. It also authorizes an individual Commissioner to examine under oath officers, agents, and employees of a PSC in relation to the PSC’s business and affairs. Therefore, a Commissioner may use the statutory authority provided by Section 40-241 to gather information from a PSC related to the amount spent by a PSC on political and charitable contributions and lobbying, so long as that authority is exercised within constitutional bounds. This authority also permits an individual Commissioner to gather information from a PSC regarding the degree to which it is intertwined with its affiliates (in terms of organization, operation, and structure). But, applying rules of statutory construction, the term “public service corporation” in this statutory provision does not include affiliates.

Background

Relevant Sources of Commission Authority

The Commission is a regulatory check on corporations “designed to promote both democratic control and competitive economic forces.” *Ariz. Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 291 (1992). The Framers drafted Article XV of the Arizona Constitution, which establishes the Commission, with a “pronounced, progressive-era concern with regulating corporations, a concern enhanced by the perceived dominance of large railroad and mining companies during the territorial era.” John D. Leshy, *The Arizona State Constitution* 356 (2d ed.

2013). The Framers did, however, “limit [the Commission’s] most sweeping regulatory jurisdiction to [PSCs].” *Id.* at 357.

Article XV, Section 3 of the Arizona Constitution grants the Commission, but not individual Commissioners, the authority to set rates and make reasonable rules, regulations, and orders governing the transaction of business by PSCs in Arizona.² While some earlier cases construed the Commission’s powers under this Section more broadly, Arizona courts have more recently assumed that the Commission’s regulatory power under Section 3 is “restrict[ed] . . . to its ratemaking function,” while acknowledging that the Commission has discretion in “determin[ing] . . . what regulation is reasonably necessary for effective ratemaking.” *Sierra Club—Grand Canyon Chapter v. Ariz. Corp. Comm’n*, 237 Ariz. 568, 572 ¶ 10 (App. 2015), review denied (Feb. 9, 2016) (quoting *Woods*, 171 Ariz. at 294); see also *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207 Ariz. 95, 111 ¶ 54 (App. 2004). Although Section 3 does not expressly address inspection, investigation, or reporting, the Arizona Supreme Court, based on the authority that Section 3 confers, upheld the Commission’s Affiliated Interest Rules. *Woods*, 171 Ariz. at 297. These rules require: (1) Commission approval of a utility holding company’s organization or reorganization and transactions between utilities and affiliates; (2) that books and records of affiliates that transact business with a utility be made available for inspection in

² Section 3 provides, in relevant part:

The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations

certain respects; and (3) that reports of diversification plans for utilities and utility holding companies be provided to the Commission. *See* A.A.C. R14-2-801 through -806.

Under Article XV, Section 4 of the Arizona Constitution, the Commission and individual Commissioners may “inspect and investigate the property, books, papers, business, methods, and affairs of any [Public Company] . . . and of any [PSC] doing business within the state.” The Legislature has also provided the Commission and individual Commissioners statutory authority regarding PSC inspections and examinations:

The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

A.R.S. § 40-241(A).

Finally, Article XV, Section 13 authorizes the Commission, but not individual Commissioners, to require reports to the Commission under oath from PSCs and Public Companies, and to require that such companies provide such information “concerning their acts and operations” as may be required by law or by the Commission. *See also Ariz. Pub. Serv. Co. v. Ariz. Corp. Comm’n*, 157 Ariz. 532, 536 (1988) (interpreting Commission order issued under Section 13); A.R.S. § 40-204 (relating to reports by PSCs to Commission).

Limitations on Commission Authority

The United States Supreme Court has recognized a First Amendment right-of-association privilege against “compelled disclosure of affiliation with groups engaged in advocacy.” *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). The Supreme Court enforced this privilege when

the government “laid no adequate foundation for its direct demands.” *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 555 (1963). The Supreme Court has further clarified that corporations—including those granted government monopolies—are generally entitled to First Amendment speech protections.³ See, e.g., *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 775-76 (1978) (interpreting the First Amendment’s speech protections as applying to corporations); *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) (analyzing First Amendment speech protections for political speech conducted through corporations); *Consol. Edison Co. of NY v. Pub. Serv. Comm’n*, 447 U.S. 530, 534 n. 1 (1980) (“Nor does Consolidated Edison’s status as a privately owned but government regulated monopoly preclude its assertion of First Amendment rights.”).

When First Amendment concerns arise, courts considering allegations of the government’s intrusion on speech or associational rights must evaluate whether there is a compelling or substantial government interest in doing so. See, e.g., *Alabama*, 357 U.S. at 463. Arizona’s specific authorizations noted above (allowing the Commission and its members to investigate PSCs’ affairs in order to achieve the Commission’s purposes on behalf of the public interest) will satisfy this inquiry where any request is substantially related to those purposes. See, e.g., *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010).

³ Notwithstanding this entitlement to speech protections, right-of-association privilege concerns may well be at their nadir for expenditures by those PSCs that are subject to extensive regulation in exchange for a government-imposed monopoly and rate of return. See, e.g., *United States v. Hubbard*, 650 F.2d 293, 306 (D.C. Cir. 1980) (identifying a corporation’s individual attributes, including “the nature and purposes of the corporate entity,” as determining the availability of any privacy right); *Sw. Transmission Co-op., Inc. v. Ariz. Corp. Comm’n*, 213 Ariz. 427, 431-32 ¶ 23 (App. 2006) (“To be a [PSC,] an entity’s ‘business and activities must be such as to make its rates, charges and methods of operation[] a matter of public concern, clothed with a public interest to the extent contemplated by law which subjects it to governmental control’” (quoting *Trico Elec. Coop., Inc. v. Corp. Comm’n*, 86 Ariz. 27, 34-35 (1959))).

Courts also review exercises of agency inspection and investigation authority for reasonableness. See *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000) (citing *People ex rel. Babbitt v. Herndon*, 119 Ariz. 454, 456 (1978)). The United States Supreme Court has identified a three-part test for reasonableness: “[I]t is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). The *Morton Salt* test is consistent with the first three factors Arizona courts commonly use for reasonableness in cases of Commission requests for information. See *Carrington*, 199 Ariz. at 305, ¶ 9, 18 P.3d at 99 (citing *Herndon*, 119 Ariz. at 456). Consistent with further explication by the United States Supreme Court, Arizona courts also have provided a fourth requirement: if an inquiry becomes “a tool of harassment and intimidation rather than a means to gather appropriate information, the appropriate court may intrude and stop the incursion into the constitutional liberties of the parties under investigation.” *Polaris Int’l Metals Corp. v. Ariz. Corp. Comm’n*, 133 Ariz. 500, 507 (1982); see also *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *Carrington*, 199 Ariz. at 305 ¶ 9 (stating all four factors).

While the subject matter of the questions presented may implicate these limitations, application of any potential First Amendment or reasonableness factors without specific facts and circumstances to evaluate would be speculative; thus further analysis of these issues is beyond the scope of this opinion.

Analysis

Question 1: The authority of an individual Commissioner under A.R.S. § 40-241 to gather information about a PSC and its affiliates' political contributions, lobbying, and charitable contributions.

Section 40-241 empowers the Commission or an individual Commissioner to gather information in two ways. First, the Commission, each Commissioner, and any person employed by the Commission may “at any time, inspect the accounts, books, papers and documents” of any PSC. Second, any Commissioner or Commission employee who is authorized to administer oaths may also “examine under oath, any officer, agent or employee of such [PSC] in relation to the business and affairs of the [PSC].” A.R.S. § 40-241.

Section 40-241 confers power on individual Commissioners as well as the entire Commission. The plain language of Section 40-241(A) specifically refers to not just “[t]he commission” but also “each commissioner.” By using the language “each commissioner,” the Legislature clearly authorized individual Commissioners to exercise the powers in this statute. *J.D. v. Hegyi*, 236 Ariz. 39, 40-41 ¶ 6 (2014) (“If the language [of a statute] is ‘subject to only one reasonable meaning,’ [courts] apply that meaning.” (citation omitted)); *see also Fields v. Elected Officials’ Ret. Plan*, 234 Ariz. 214, 218 ¶ 16 (2014) (stating that “the legislature generally avoids redundancy”).

The authority conferred by Section 40-241 applies to inspections of PSCs and examinations of PSC personnel; it does not extend to affiliates of PSCs. Section 40-241(A) refers to any “public service corporation,” which is not defined in the Arizona Revised Statutes but in the Arizona Constitution. Ariz. Const. art. XV, § 2. Therefore, the term’s interpretation

should be consistent with its constitutional definition, which does not include affiliates. *See id.*; *Stoecker v. Brush Wellman, Inc.*, 194 Ariz. 448, 453 ¶ 17 (1999) (“The statute’s text is read *in pari materia* with the constitutional provision that authorizes it.”) (citation omitted)); *cf. Rural/Metro Corp. v. Ariz. Corp. Comm’n*, 129 Ariz. 116, 118 (1981) (noting that Article XV, Section 6 of the Arizona Constitution “does not allow the legislature to give ‘public service corporation’ designation to corporations not listed in Article 15, § 2”). This conclusion is bolstered by the fact that another pertinent statute specifically refers to “affiliate” separately from a PSC, even though that language was enacted after Section 40-241. *See* 1998 Ariz. Sess. Laws ch. 209, § 23 (2d Reg. Sess.) (amending A.R.S. § 40-202(C)(2), (C)(6)); *State v. Garza Rodriguez*, 164 Ariz. 107, 111 (1990) (“[W]hen determining legislative intent, court[s] may consider both prior and subsequent statutes *in pari materia*.” (citation omitted)).

In sum, pursuant to Section 40-241, an individual Commissioner may gather information regarding a PSC’s political and charitable contributions, and lobbying expenditures, by inspecting the books and records of a PSC, and examining under oath PSC personnel.

Question 2: The authority of an individual Commissioner under A.R.S. § 40-241 to investigate a PSC and its affiliates’ corporate organization, operation, and structure to ensure the security and financial health of the affiliate in order to protect consumers.

Consistent with the answer to Question 1, based on the statute’s plain language, Section 40-241 confers power on individual Commissioners, not just the Commission as a whole. Based on the use of the term “public service corporation,” the statute empowers a Commissioner to investigate by inspecting the accounts, books, papers, and documents of a PSC, but not any affiliates. The statute also authorizes an individual Commissioner to investigate by

examining under oath officers, agents, and employees of a PSC in relation to the PSC's business and affairs. As noted in this question, such an investigation's purpose would be to ascertain any risks the affiliates create regarding the financial wellbeing or effective operation of the PSC.

Question 3: The Commission and individual Commissioners' authority under Article XV of the Arizona Constitution, Affiliated Interest Rules, and related case law to require a PSC to report information about itself or its parent, subsidiary, and other affiliated corporations relevant to the Commission's constitutional authority.

Reporting requirements pursuant to Article XV, Section 3, including the Affiliated Interest Rules.

Under Article XV, Section 3 of the Arizona Constitution, the Commission may require reports pursuant to rules that are reasonably necessary for effective ratemaking. Section 3 grants the Commission authority to "prescribe . . . just and reasonable rates" and "make reasonable rules, regulations, and orders, by which [PSCs] shall be governed in the transaction of business within the state." Ariz. Const. art. XV, § 3. The authority conferred by Section 3 (ratemaking and rulemaking) must ultimately be exercised by the Commission, not an individual Commissioner. *See, e.g.,* Ariz. Const. art. XV, § 6 (empowering the Legislature to make rules and regulations for Commission proceedings); A.R.S. § 40-102(C) (requiring assent of a majority of Commissioners for an action or order to be "the act of the [C]ommission," or a "finding, order, or decision of the [C]ommission"). In addition, Section 3 refers to the "corporation commission." Other provisions of Article XV refer to "the several members" of the Commission, showing that the drafters knew how to confer authority on individual Commissioners and did not do so here. *See* Ariz. Const. art. XV, § 4; *Roubos v. Miller*,

214 Ariz. 416, 420 ¶ 20 (2007) (where the Legislature knows how to do something, as shown elsewhere in the statutory scheme, absence of such language indicates absence of such intent).

Section 3 does not expressly address requiring reports from PSCs. However, in 1990, the Commission adopted the Affiliated Interest Rules. *Woods*, 171 Ariz. at 288. The rules, which apply to the largest utilities, require Commission approval of the organization or reorganization of a utility holding company and transactions between utilities and affiliates. A.A.C. R14-2-801(5), 803, 804(B). They also require that the books and records of affiliates that transact business with utilities be made available for Commission inspection to the extent necessary to audit transactions with utilities. A.A.C. R14-2-804(A). In addition, the rules require reports to the Commission of diversification plans for utilities and utility holding companies. A.A.C. R14-2-805. In *Woods*, the Arizona Supreme Court reviewed whether these rules were constitutional under Article XV, Section 3. *See Phelps Dodge Corp.*, 207 Ariz. at 116 ¶ 83 (discussing *Woods*'s approach to question of rules' constitutionality). The court upheld the rules, concluding that they were "reasonably necessary for effective ratemaking." *Woods*, 171 Ariz. at 294, 297. Under *Woods*, the Commission has authority to adopt additional reporting requirements for PSCs and affiliates under Article XV, Section 3, so long as the additional requirements are reasonably necessary for effective ratemaking. *See id.*

Reporting requirements under Article XV, Section 13.

Under Article XV, Section 13, the Commission, but not individual Commissioners, may require reports and information concerning the "acts and operations" of a PSC or Public Company. Because the language of Section 13 authorizes reports "as may be required by law, or by the corporation commission," the authority to require reports is not conferred on an individual Commissioner. *See also* A.R.S. § 40-204(A), (B) (vesting authority in the Commission). The

power of the Commission to require reports from companies other than PSCs under Article XV, Section 13 was litigated in *Arizona Public Service Co.*, 157 Ariz. 532. The court concluded that a corporation that is not a PSC is subject to the powers set forth in this section if it is a Public Company:

[T]he powers conferred upon the Commission to inspect and investigate under § 4 and to require reports under § 13 extend to all corporations which offer stock for sale to the public. They do not extend to those corporations which do not do so.

Id. at 535. Therefore, this power could relate to an affiliate of a PSC only if the affiliate is a Public Company.

Conclusion

As set forth in this opinion, the Commission, and in some instances individual Commissioners, have the authority to gather information, inspect, and require reports related to the topics specified in the questions presented, subject to fact-specific constitutional considerations.

Mark Brnovich
Attorney General

EXHIBIT K

Utility owner, ex-regulator, lobbyist indicted on bribery, fraud charges

Ryan Randazzo, The Republic | azcentral.com Published 3:59 p.m. MT May 25, 2017 | Updated 9:52 p.m. MT May 30, 2017



(Photo: David Wallace/The Republic)

Corrections & clarifications: The name of U.S. Rep. Andy Biggs, R-Ariz., was misspelled in an earlier version of the video accompanying this story.

Former Chairman of the Arizona Corporation Commission Gary Pierce and water company owner George Johnson were indicted this week in federal court on charges of bribery, conspiracy and fraud.

The charges filed in U.S. District Court on Tuesday said Pierce approved higher rates for Johnson Utilities in the East Valley and Pinal County in exchange for \$31,000, which the company funneled to his wife.

Also named in the eight-count indictment were Sherry Pierce and lobbyist Jim Norton, who the indictment said "agreed to act as a conduit" between Johnson and Gary Pierce.

The indictment also describes a plan for Pierce to buy a \$350,000 land parcel with funds that actually were coming from Johnson, though the indictment does not indicate that transaction was completed.

Pierce voted in 2011 to allow a rate increase for Johnson Utilities that the staff at the Corporation Commission opposed, and he voted in 2013 for a controversial change (<http://archive.azcentral.com/business/articles/2012/07/05/20120705arizona-utility-who-must-pay-taxes.html>) that allowed the utility to raise customer rates to pay the personal income tax of the company owners. Both hikes were approved by majority votes of the commission.

ALLSTATE SMALL BUSINESS BAROMETER
Phoenix Passion Is Driving Small Business

(<http://www.azcentral.com/story/sponsor-story/allstate-small-business-barometer/2017/04/26/phoenixs-small-business-owners-get-into-zone/100849580/>)

Other water companies subsequently filed for similar increases allowing the collection of their owners' income taxes through utility rates.

Norton, a managing partner at Axiom Public Affairs, wields considerable influence at the state Capitol, where he lobbies for business interests. He also has a strong personal relationship with Gov. Doug Ducey, whom he has known since college. Photos of the two appear on Norton's Facebook page.

Neither Pierce nor Norton immediately responded to *The Arizona Republic's* request to discuss the indictment. Johnson declined to comment.

MORE: [Read the indictment \(http://archive.azcentral.com/persistent/icimages/news/Johnson%20indictment.pdf\)](http://archive.azcentral.com/persistent/icimages/news/Johnson%20indictment.pdf)

The indictment said Norton, then working for R&R Partners, was offered the opportunity to buy land for Pierce for \$350,000, using Johnson's money.

The plan involved a co-conspirator, who was not named or indicted, who charged Johnson \$6,000 a month to act as a consultant. That co-conspirator would give Sherry Pierce simple tasks and have her submit monthly invoices of \$3,500 from November 2011 through August 2012, the indictment said.

"The purpose of this consulting arrangement was to conceal the direct payment of funds by defendant George Harry Johnson to defendant Gary Leonard Pierce," the indictment said. This was done "in order to hide the conspiracy and scheme to defraud," the indictment said.

In June 2016, the [Federal Bureau of Investigation](http://www.fbi.gov/newsroom/press-releases/2016/06/10/fbi-questions-former-utility-regulator-aps-corporation-commission/85716806/) said it was investigating matters involving statewide elections in 2014, and Pierce was questioned ([/story/money/business/energy/2016/06/10/fbi-questions-former-utility-regulator-aps-corporation-commission/85716806/](http://story/money/business/energy/2016/06/10/fbi-questions-former-utility-regulator-aps-corporation-commission/85716806/)) at that time.



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It was not known whether the indictments grew out of that investigation.

The indictment is another black eye for the regulatory body that sets utility rates and policies in Arizona. The commission's former chairwoman, Susan Bitter Smith, resigned amid a conflict of interest controversy in 2015 ([/story/money/business/energy/2015/12/17/susan-bitter-smith-resigns-arizona-corporation-commission/77501558/](https://www.usatoday.com/story/money/business/energy/2015/12/17/susan-bitter-smith-resigns-arizona-corporation-commission/77501558/)). Former Chairman Bob Stump was involved in a dispute regarding text messages he deleted ([/story/money/business/energy/2016/01/22/review-bob-stumps-deleted-text-messages/79179590/](https://www.usatoday.com/story/money/business/energy/2016/01/22/review-bob-stumps-deleted-text-messages/79179590/)) and therefore couldn't be provided as part of a public-records request, and two Republicans elected in 2014 have been accused of being helped in their campaigns by the state's biggest utility, Arizona Public Service Co. ([/story/money/business/energy/2015/12/01/regulator-robert-burns-wants-aps-disclose-its-dark-money-contributions-political-candidates/76592810/](https://www.usatoday.com/story/money/business/energy/2015/12/01/regulator-robert-burns-wants-aps-disclose-its-dark-money-contributions-political-candidates/76592810/))

The indictment still was a surprise to some with close ties to the organization, including Paul Walker, who has represented several companies with rate cases at the commission.

"This constant stream of problems coming out of the Corporation Commission I hope raises the interest of the Legislature and governor and voters to really start to look at whether we want to continue to elect people to the Corporation Commission, or follow the lead of many states and have them appointed and confirmed by the Legislature," Walker said Thursday.

The players

Gary Pierce: Served on the Corporation Commission from 2007 to 2014, including as chairman. Also served as a majority whip of the Arizona House of Representatives and as a Yuma County supervisor. He is a former teacher and business owner. Among his more controversial votes on the commission was the 2013 decision to begin charging a special monthly fee to solar users for APS. It was among the first of such charges in the country.

Jim Norton: The lobbyist has represented myriad clients with his current partners at Axiom Public Affairs and with R&R Partners previously. Active clients include the Arizona Chamber of Commerce and Industry, city of Phoenix, APS, Arizona Auto Dealers Association, Arizona Coyotes and Raytheon Co., according to state records.

George Johnson: The owner of Johnson Utilities has been involved in several high-profile matters considering the small size of his utility, which has about 20,000 customers. Last year state environmental regulators warned that water from his company was unsafe for infants ([/story/news/local/pinal/2016/12/02/johnson-utilities-pinal-county-drinking-water-nitrate-level/94844664/](https://www.usatoday.com/story/news/local/pinal/2016/12/02/johnson-utilities-pinal-county-drinking-water-nitrate-level/94844664/)). Johnson also was involved in a 2007 record settlement with the state for \$12.1 million for environmental damages. A report earlier this year said the utility ranked No. 2 in violations ([/story/news/local/arizona-water/2017/05/02/arizona-drinking-water-violations-common-report-says/101169862/](https://www.usatoday.com/story/news/local/arizona-water/2017/05/02/arizona-drinking-water-violations-common-report-says/101169862/)) among the state's 10 largest water systems with at least one violation.

Sherry Pierce: The wife of Gary Pierce has her own political connections, in addition to their son, Justin, who served as a state representative and unsuccessfully ran for secretary of state in 2014. She served as the deputy district director for former U.S. Rep. Matt Salmon and holds that same position today for U.S. Rep. Andy Biggs.

Republic reporter Yvonne Wingett Sanchez contributed to this article.

Read or Share this story: <http://azc.cc/2rW0ASK>

EXHIBIT L

REMARKS FROM THE
THIRTIETH ANNUAL MEETING OF SHAREHOLDERS
WEDNESDAY, MAY 20, 2015

FOLLOW A LEADER

PINNACLE WEST CAPITAL CORPORATION



DON BRANDT

THANK YOU ALL FOR BEING HERE TODAY TO LEARN ABOUT
YOUR COMPANY'S PERFORMANCE IN 2014.

Our value proposition remains compelling, and unchanged: Pinnacle West combines a solid financial foundation with superior operating performance, excellent customer satisfaction and deep community involvement. We serve an area of the country with superior long-term growth potential and a constructive regulatory climate. We are making smart investments to modernize the electricity grid, and staying at the forefront of changes taking place within our industry. In summary, we are performing well today and ready for what's next.

I'll start with our financial performance. We achieved strong earnings, our best-ever credit ratings and a record stock price.

Our stock price, which began 2014 at \$52.92, was \$68.31 on December 31—a 29 percent improvement. Pinnacle West outperformed the S&P 1500 Electric Utility Index and the overall stock market. When our stock price hit an all-time high of \$72 earlier this year, our market capitalization reached \$8 billion.

Our stock price has come down from this record high, but we are not alone. The broad utility sector has declined, due largely to speculation about rising interest rates, which are always a headwind for utility stocks and other dividend-oriented stocks.

For the third straight year, our board of directors increased our dividend, raising it by 4.85 percent to \$2.38 per share. This action demonstrates our continued confidence in our financial health and growth potential.

Arizona's economic forecasts remain positive; the reasons people want to move to our great state have not changed. We continue to anticipate healthy long-term growth for Arizona and, in turn, for APS. We are committed to exercising financial discipline as we manage costs to keep them in line with our sales growth.

Operational performance at APS again ranked among the best in our industry. It is our job to deliver safe, reliable and affordable energy to all our customers. A lot goes in to providing that power every day, and we do it as well as any in our industry. Our safety record and reliability both rank in the top quartile among our peers, and JD Power consistently ranks APS in the top five utilities in the nation for customer satisfaction.

The electricity we provide our customers comes from a diverse mix of high-performing and increasingly clean generation. Over the last two years, we have reduced our carbon emissions by more than four million tons per year. We have cut emissions of

mercury by 61 percent, particulates by 43 percent and nitrogen oxides by 36 percent. Looking forward, we anticipate reducing the carbon intensity of our power generation by 26 percent over the next 10 years.

The heart of our generation fleet, of course, is Palo Verde Nuclear Generating Station, the nation's largest power producer of any kind for 23 years running.

Last year Palo Verde produced a site record 32.3 million megawatt-hours of electricity—something no other power plant in the United States has ever done. Every one of those megawatt-hours was carbon-free.

We are modernizing our coal fleet. We have closed three older, less efficient units at our Four Corners power plant, and we are investing in additional environmental controls on the remaining units. At our Cholla power plant, we plan to shut down one unit by the end of 2016, and stop burning coal at the other units by the mid-2020s.

We are modernizing our natural gas fleet with an upgrade of our Ocotillo power plant. We will replace two 1960s-era generators, with five state-of-the-art turbines that are cleaner, quieter and use less water. Upgrading Ocotillo is a particularly important project because it will provide critical power when needed to back up and support the continued growth of renewable energy in Arizona.

Our growing renewable portfolio reached 1,200 megawatts last year—with 875 MWs coming from solar power. We expect zero emission sources to meet more than 50 percent of our new energy needs through 2029.

Our leadership in solar was recognized again this year by the Solar Electric Power Association. APS earned the number four spot nationally for solar generation, behind three—many times larger—California utilities. We have been a fixture at the top of these lists since the organization began ranking utilities in 2007.

Earlier this year, we announced an innovative pilot program that will allow residential customers, who might not be able to purchase or lease their own rooftop systems, to “go solar.” By using advanced inverters, and orienting the panels to get more solar production late in the day when our customers need it most, this initiative will provide valuable research on how to integrate the growth of distributed solar generation in a way that benefits all customers.

Another groundbreaking initiative will provide important research on how to update the century-old utility pricing model to reflect the changing way our customers use electricity.

In collaboration with the Arizona Solar Deployment Alliance, we will recruit 200 rooftop solar customers to switch to a rate that rewards them for reducing electricity use during peak periods. At the same time, these customers will be using advanced technologies to help manage their energy use such as battery storage, load management devices, and advanced thermostats.

The local solar industry will gain insights to enhance the value of their products. We will learn how new technologies and sound rate design can help our customers save money and be smarter energy consumers.

These initiatives are attracting national attention, with one trade publication commenting that they could “change the utility business model.”

APS is committed to staying ahead of ever-changing consumer technologies and making sure our system is prepared for what's next. We are proud to lead the way.

Before I leave the subject, I want to address a question I hear frequently: “If everyone agrees that Arizona should be a leader in solar energy, why is the topic so controversial?”

Most solar companies work collaboratively with utilities to serve our shared customers. This includes

international companies investing in Arizona, such as Abengoa, the Spanish company that built the innovative Solana Generating Station in Gila Bend. It includes industry leaders such as First Solar, headquartered down the road in Tempe. And it includes entrepreneurial Arizona small businesses such as American Solar & Roofing, which will be an important part of our rooftop solar pilot program. Together, we recognize that solar is a growing part of America's generation mix, but it can't succeed without a modern electricity grid.

In contrast, a narrow sector of the industry, comprised of California-based rooftop solar leasing companies, rejects collaboration.

An editorial writer for the *Arizona Republic* described it well when he said: "...the industry is conducting political attack campaigns against its perceived opponents, the incumbent utilities, disparaging their character, and trying to damage their reputations."

Why? The writer went on to explain that an important rate decision "...was going to be made by the elected politicians on the Arizona Corporation Commission. If the rooftop solar industry could make APS politically toxic, the commission might protect its subsidy."

In other words, the political and media controversy in Arizona over solar energy is not the byproduct of a legitimate policy disagreement. It is political theater, manufactured to confuse the issue and damage one of Arizona's largest employers.

At this point, I remind our long-time shareholders that our approach during rate cases in 2009 and 2012 was to successfully negotiate compromise agreements with stakeholders for the various interests: large businesses, environmental groups, low income advocates, consumer watchdogs and so on. Our record of constructive issue resolution is clear, and it is long.

In 2014, the solar leasing companies went a step further, supporting two candidates for the Arizona Corporation Commission on an explicitly anti-APS platform. This caused us to reevaluate how to ensure the interests of APS customers, employees, communities and shareholders are represented in the political process.

Whenever we make the decision to support a candidate or cause, we follow the laws regarding campaign contributions and disclosure. Our policy is published on our website for all to see. Today's shareholder proposal advocated for our company to voluntarily disclose more than the law requires.

We respectfully disagree with that point of view. This is not an energy issue—it is a campaign finance issue, for others to debate and decide. Our responsibility is to follow the law with honesty and integrity, and that is what we do.

We will advocate for sound policies that enable a sustainable energy future for Arizona. That means thinking big-picture, and looking long-term.

APS is committed to the long-term success of solar energy, to a modern electricity grid that enables future customer innovations, and to an updated electricity pricing model that is fair for all customers. These are the policy principles for which we advocate.

Our future and Arizona's future have been tied together for more than a century. We are one of the state's oldest and largest home-grown businesses. We are the state's largest taxpayer. We purchase more than \$1 billion of goods and services from Arizona companies. We support vital charitable causes all across our state.

Last year, our employees volunteered 147,000 hours in community service. If we placed a dollar value on their contributions, it would equal \$3.3 million. That is in addition to the \$10 million in APS charitable contributions throughout the year.

It is this commitment that gets APS recognized as a leader that places a high importance on giving back to the communities where we live, work and play.

I'd like to recognize a few dedicated employees who are here with us today.

Last September, I accompanied a group of APS military veterans to Washington, D.C., to accept the Freedom Award for our company. The Freedom Award is the highest honor given by the U.S. Department of Defense to civilian employers for their support of National Guard, Reserve and veteran employees.

We have a great appreciation for our nation's defenders. We value not only their sacrifices during their service in the armed forces, but also the work ethic and experience they bring to the civilian workforce. More than 20 percent of APS's 6,500 men and women are veterans.

Will our military veterans here today please stand? Thank you for being here, and thank you again for your service to our country, our state, and this great company. You can be seated.

Before I close, I'd like to turn the focus to a woman I admire, and am grateful to have known. Earlier this year, we were saddened by the passing of our board member and friend Sue Clark-Johnson. Sue was the personification of the adage "good things come in small packages."

She was a pioneer in the newspaper industry, breaking gender barriers by becoming the first female head of the newspaper division at Gannett, and advocating early on for the newspaper industry's adoption of technology.

I'm pleased to announce that with an endowed investment of \$100,000, APS has become the founding sponsor of the Sue Clark Johnson Professorship in News Innovation at the Walter Cronkite School

of Journalism at ASU. We hope others will join us in helping Sue's forward-thinking example to live on at the Cronkite School.

I appreciate the time you've taken to be with us, and I hope you come away from today's meeting with a sense of confidence in your company's financial strength, operating performance, policy leadership and commitment to Arizona—today and into the future.

Thank you.

PINNACLE WEST
CAPITAL CORPORATION

CS#1505027